

N. 2823

No. 13727

United States
Court of Appeals
For the Ninth Circuit.

CONSOLIDATED FLOWER SHIPMENTS,
INC., BAY AREA,

Petitioner,

vs.

CIVIL AERONAUTICS BOARD and AIR-
BORNE FLOWER AND FREIGHT TRAF-
FIC, INC,

Respondents.

Transcript of Record

Petition to Review an Order of the Civil Aeronautics Board.

FILED

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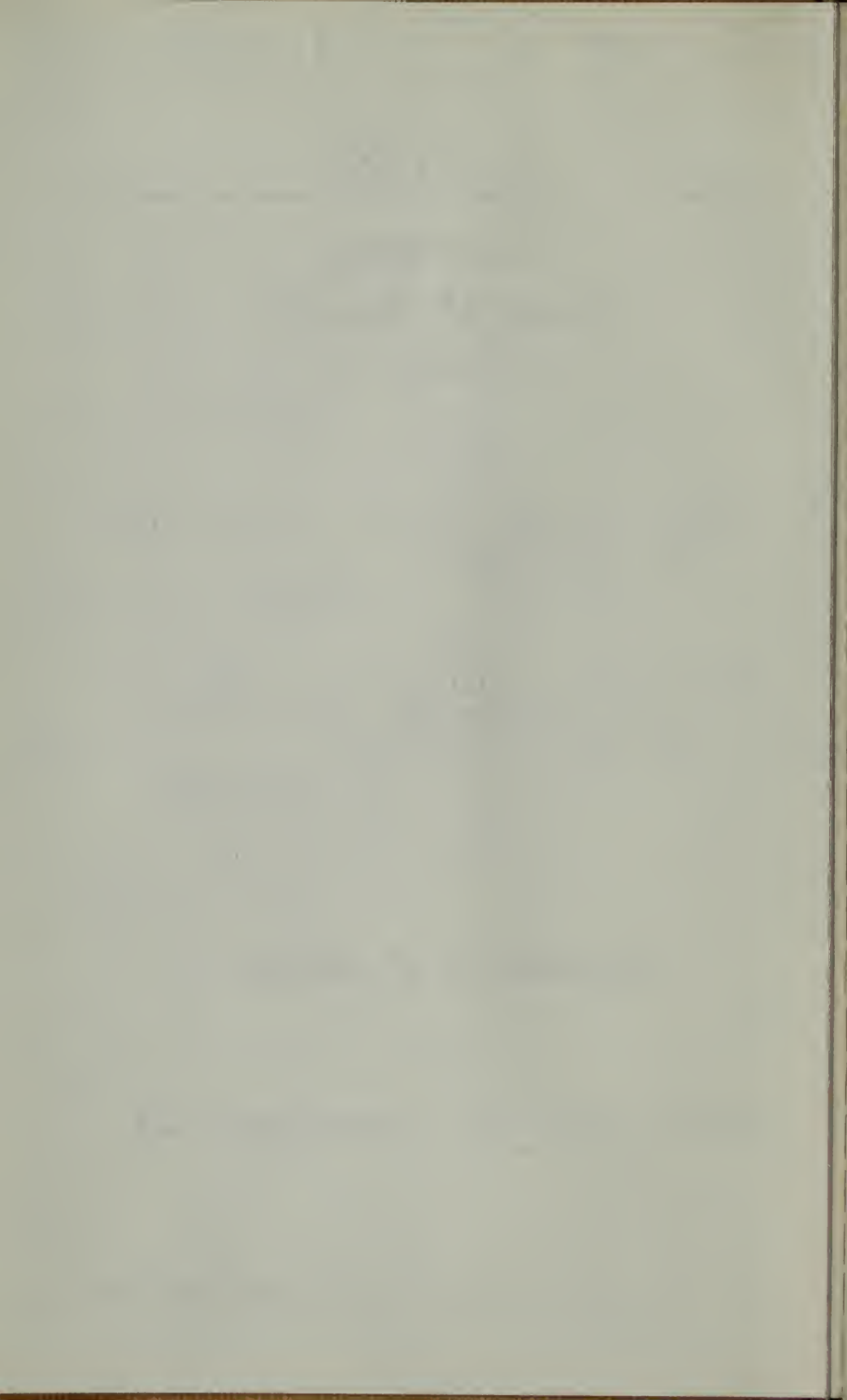
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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For Respondent, Airborne Flower and Freight
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PAUL T. WOLF,
155 Sansome St.,
San Francisco.



Orders

Serial Number E-5264.

United States of America

Civil Aeronautics Board

Washington, D. C.

Docket No. 4902

Adopted by the Civil Aeronautics Board at its Office
in Washington, D. C., on the 9th day of April,
1951.

In the Matter of:

The Activities and Practices of CONSOLIDATED
FLOWER SHIPMENTS, INC., BAY AREA

ORDER OF INVESTIGATION

It Appearing to the Board upon the basis of
informal investigation, informal complaints, and
other information available to the Board that:

(1) Consolidated Flower Shipments, Inc., Bay
Area, is a corporation organized and existing under
the laws of the State of California, located at Post
Office Box 4, Redwood City, California;

(2) Since on or about June 14, 1949, Consoli-
dated Flower Shipments, Inc., Bay Area, in the
ordinary and usual course of its undertaking, per-
formed or provided for the assembly and consoli-
dation of flower shipments for transportation upon
various direct air carriers, and performed or pro-
vided for break-bulk and distribution with respect
to such shipments, and may have assumed respon-

sibility for the transportation of such shipments from the point of receipt to point of destination;

(3) Since on or about June 14, 1949, Consolidated Flower Shipments, Inc., Bay Area, may have been engaged and presently may be continuing to engage indirectly in the carriage by aircraft of property as a common carrier for compensation or hire in commerce between places in various states of the United States, particularly between San Francisco, California, on the one hand, and New York, New York; Philadelphia, Pennsylvania, and Chicago, Illinois, on the other;

(4) No certificate of public convenience and necessity or other form of economic operating authority to engage in air transportation has been issued by the Board to Consolidated Flower Shipments, Inc., Bay Area.

The Board, acting upon its own initiative, and pursuant to the authority vested in it by the Civil Aeronautics Act of 1938, as amended, particularly sections 205 (a), 401 (a), 1002 (b) and 1002 (c), thereof, and finding that its action is necessary in order to carry out the provisions of such Act and the requirements established pursuant thereto, particularly Part 296 of its Economic Regulations, and to exercise and perform its powers and duties thereunder; [1*]

It Is Ordered That:

1. An investigation be and it hereby is instituted into the operations of Consolidated Flower

*Page numbering appearing at top of page of original Certified Transcript of Record.

Shipments, Inc., Bay Area, to determine whether said Consolidated Flower Shipments, Inc., Bay Area, has engaged or is engaging indirectly in air transportation in violation of the provisions of the Act, particularly section 401 (a) thereof, or any requirement established pursuant thereto, particularly Part 296 of the Board's Economic Regulations, and if any such violation is established, whether the Board should issue an order directing Consolidated Flower Shipments, Inc., Bay Area, to cease and desist from such violation, or such other or further order or orders as may be necessary to compel compliance with the provisions of the Act and requirements thereunder established;

2. Consolidated Flower Shipments, Inc., Bay Area, be and it hereby is directed and required until otherwise ordered by the Board to preserve and refrain from destruction of any and all memoranda and documents pertaining either to its organization and operations, or the organization and operations of its predecessor company, since January 1, 1949, including all correspondence, shipping manifests, air bills, receipts, invoices, checks and check stubs, and all advertisements, brochures, notices, announcements, and other publicity material;

3. Consolidated Flower Shipments, Inc., Bay Area, be and it hereby is made a party to this proceeding;

4. This proceeding be assigned for a public hearing before an examiner of the Board at a time and place hereafter to be designated;

5. Consolidated Flower Shipments, Inc., Bay Area, be immediately notified by telegram of the entry of this order and thereafter duly served with a copy of such order.

By the Civil Aeronautics Board:

[Seal] /s/ M. C. MULLIGAN,
Secretary. [2]

United States of America
Civil Aeronautics Board
Washington, D. C.

Docket No. 4902, et al.

Consolidated Flower Shipments, Inc., Bay Area

NOTICE OF HEARING

In the Matter of the Investigation of the Activities and Practices of Consolidated Flower Shipments, Inc., Bay Area.

Notice is hereby given that pursuant to the Civil Aeronautics Act of 1938, as amended, particularly sections 205 (a), 401 (a), 1002 (b), and 1002 (c) of said Act, a public hearing is assigned to be held in the above-entitled proceeding on February 25, 1952, at 10:00 a.m. (Pacific standard time) in the Customs Court, 4th floor of the Appraisers Building, 630 Sansome Street, San Francisco, California, before Examiner Richard A. Walsh.

Without limiting the scope of the issues presented

United States of America
Civil Aeronautics Board
Washington, D. C.

Docket No. 4902, et al.

In the Matter of:

CONSOLIDATED FLOWER SHIPMENTS,
INC., BAY AREA; JOHN C. BARULICH,
WILLIAM ZAPPETTINI

TRANSCRIPT OF ORAL PROCEEDINGS
February 25, 1952

The above-entitled matter came on for hearing,
pursuant to notice, at 10:00 a.m.

Before: Richard A. Walsh, Examiner.

Appearances:

JOHN J. STOWELL,
Enforcement Attorney,
Washington, D. C.,

Appearing on Behalf of the Civil Aero-
nautics Board.

ANTONIO J. GAUDIO,
106 Bank Building,
South San Francisco, California,

Appearing on Behalf of Respondents.

PAUL T. WOLF, and
A. S. GLIKBARG,

155 Sansome Street,
San Francisco 4, California,

Appearing on Behalf of Airborne
Flower and Freight Traffic, Inc. [51]

CLYDE E. REYNOLDS

was called as a witness for and on behalf of the
Enforcement Attorney and, having been duly sworn,
was examined and testified as follows:

Direct Examination

By Mr. Stowell:

Q. Would you give your full name and business
name to the reporter, please?

A. Clyde E. Reynolds, Reynolds Brothers Trans-
fer and Storage, Redwood City.

Q. What is the nature of your occupation, Mr.
Reynolds?

A. At present it is household goods and storage
moving.

Q. By that you mean trucking?

A. Trucking, general commodities.

Q. When did you enter upon this enterprise in
the California area?

A. It was March 2, 1945.

Q. Were you ever employed by Slick Airways
as a cargo agent? A. As an agent, yes.

Q. About when was that?

(Testimony of Clyde E. Reynolds.)

A. Approximately three years ago. It is not exact on that. [62*]

Q. Would February, 1949, be an approximate date? A. Approximately.

Q. When did you leave the service of Slick?

A. I have never left service for Slick as an agent. That is all, just an agent.

Q. I am interested in finding out a little bit about the history of Bay Area Flower Growers and Shippers. Would you think a moment, and tell me what you know about how that organization was organized at the very outset, how and why it was organized?

Mr. Gaudio: Just a moment. Mr. Examiner, I do not mean to impede counsel's inquiry in that respect, but in the absence of a further foundation I am not sure that that might call for the witness' conclusion. It has no connection with respondent, Bay Area, as I understand it.

Examiner Walsh: We should have more foundation for that question.

Mr. Stowell: I will change the question.

Q. (By Mr. Stowell): Mr. Reynolds, when did you first hear of the organization, Bay Area Flower Growers and Shippers?

A. I do not have the exact date of it, but I was one of the instigators of starting it, and at the time I was interested in trucking only, and one of the——

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Testimony of Clyde E. Reynolds.)

Q. Excuse me. I would like to ask you a further question. I think you have answered my [63] question. Did you ever hear of a person by the name of Mrs. Decia? A. I did.

Q. What connection did you have with her?

A. As a trucker, hauling flowers.

Q. Did you and Mrs. Decia ever write a letter to the airlines?

Examiner Walsh: Who is Mrs. Decia?

The Witness: Mrs. Decia was secretary of the Bay Area Flowers Consolidated. She is also a shipper, wholesale shipper.

Examiner Walsh: Is that the predecessor association to respondents, or is that a different association?

The Witness: It was——

Mr. Gaudio: I cannot hear the witness, and I believe the answer is that she is part of Bay Area. I am not sure that that is entirely correct.

The Witness: She was originally. I don't know now. She was the secretary at the time.

Examiner Walsh: The predecessor to this respondent. That is what I wanted to know.

The Witness: I don't understand the question.

Examiner Walsh: Will you lay a little more foundation for that, Mr. Stowell? I want to get the connection of Mrs. Decia with the respondent. [64]

Q. (By Mr. Stowell): Who is Mrs. Decia, to your knowledge? A. A flower shipper.

Q. Does she operate the California Floral Service? A. Yes.

(Testimony of Clyde E. Reynolds.)

Q. Did you and Mrs. Decia ever contact the Flower Growers and Shippers in this area and discuss with them the advisability of getting together in a shippers' association?

A. I believe it was Mr. Al Decia, through Virginia Decia.

Q. But the answer to my question is yes?

A. Yes.

Q. After this discussion did you talk to anyone else about the matter?

A. I talked to all the growers.

Q. Did you contact the air lines? A. Yes.

Q. Did you and Mr. Decia write a letter to the air lines? A. Yes.

Q. Mr. Reynolds, I show you a copy of a letter dated April 4, 1949. Would you examine this, please?

Did you and Mr. Decia write this letter?

A. I won't say that she and I wrote it, but it was during the talking, the information from different shippers and people that we talked to, that this is what we concluded.

Q. I see. Who wrote the letter, if you [65] know?

A. I wouldn't say for sure on that. I believe Mrs. Decia. I am not positive of that.

Q. Have you ever seen this letter before?

A. Yes, I have.

Q. Where?

A. I have it in my office, some of the original let-

(Testimony of Clyde E. Reynolds.)

ters that were sent out for the shippers to sign up on.

Q. Was this letter shown to you prior to being sent out? A. Yes.

Q. And to the best of your knowledge Mr. Decia sent this letter?

Mr. Gaudio: I submit that it is not in conformity with his prior testimony. He said he did not know who wrote it. He was familiar with it.

Examiner Walsh: Is that in the form of an objection?

Mr. Gaudio: I will object to the question as calling for the conclusion of the witness and also as leading.

Examiner Walsh: I will pass upon your objection after I hear one or two more questions.

Mr. Gaudio: Very well.

Q. (By Mr. Stowell): As far as you know, then, you have no further knowledge as to who actually mailed this letter?

A. No, I don't have.

Q. Can you tell us what happened after this letter was [66] sent?

First, I would like to ask one more question: Do you know to whom this letter was addressed?

A. Yes, it was addressed to all shippers that we were interested in getting into the Consolidation.

Q. How about the air lines?

A. Well, the air lines would have no——

Mr. Gaudio: Mr. Examiner, the witness has tes-

(Testimony of Clyde E. Reynolds.)

tified that he doesn't know when the letter was written, or rather by whom signed, and I submit if he doesn't know that he wouldn't know of his own knowledge if it was ever received by anyone. I think the question is leading, and also calls for a conclusion, and I object on that ground. There is no foundation laid that the witness knows anything about the course of this letter.

Q. (By Mr. Stowell): I want to ask the witness, do you know of your own personal knowledge to whom this letter was sent?

A. Yes, I do. In fact, I have taken them out and got a lot of them signed myself.

Examiner Walsh: You do know that they were sent out or taken around?

The Witness: That is right.

Examiner Walsh: I will overrule your objection as to that point, Mr. Gaudio. [67]

Q. (By Mr. Stowell): Of your personal knowledge, was this letter mailed to the air lines in this area? A. Not to my knowledge.

Q. Could you tell us what happened after you went around to the various shippers and got them to sign this letter?

Mr. Gaudio: What happened in what connection, counsel?

Mr. Stowell: I will rephrase the question.

Q. (By Mr. Stowell): What was the next chronological event after you went around and had this letter signed by various shippers? What hap-

(Testimony of Clyde E. Reynolds.)

pened, if you know, were there any meetings or further discussions between you and anyone?

A. Yes, there were several meetings held at California Floral in Redwood City, and at that time there were officers elected, and my understanding was that it was made a non-profit organization, incorporated. Mr. Zappettini was president, Mr. Bonacorsi was vice-president, I believe, and Virginia Decia was secretary, and Al Enoch was chairman of the board.

Q. Of your personal knowledge, do you know whether any of the air carriers' representatives held meetings of discussions with the flower growers concerning this group?

A. I believe that there were several of them there at different meetings. There were two, in fact, that I know of that were there at different meetings to find out if it could be worked. [68]

Q. Which air lines were they?

A. There was Slick, Flying Tigers, and American Airlines.

Q. How about United?

A. I believe that they were at the meeting also.

Q. Did this group engage you as a trucker to pick up flowers at the shippers' place of business and transport them to the airport?

A. They did.

Q. Where did you maintain your operations office?

A. Mills Field, South San Francisco; it was set

(Testimony of Clyde E. Reynolds.)

up at a later date. But originally it started out at Redwood City.

Q. Could you tell us about when the change was made? A. I don't have any records on that.

Q. Have you been out to the San Francisco airport recently? A. Yes, I have.

Q. Are you aware where the respondent, John Barulich, now maintains his office? A. Yes.

Q. Is that office the same premises which you occupied as your operations office as a trucker?

A. It is.

Q. Did you employ anyone to assist you, Mr. Reynolds?

A. Yes, Tal Lloyd. He did the assembling. That is, he called the orders and made reservations on planes, and I went out and picked them up. [69]

Q. What was the title of his position?

A. I don't believe he had a title, other than just office help there, helping routing.

Q. How much did you pay him per week?

A. \$80 per week.

Q. Could you describe for us the mechanics of your operation—and by that I mean discuss the mechanics, how did you know where to pick up boxes, where did you take them, what did you do with the boxes, what kind of papers were executed in connection with them?

Mr. Gaudio: Mr. Examiner, I will object to the question, unless it is fixed in point of time, as not relevant to the issues here involved. The witness

(Testimony of Clyde E. Reynolds.)

might answer by saying he hauled household goods between San Francisco and Los Angeles.

Mr. Stowell: I am sure the witness is quite aware, Mr. Examiner—

Mr. Gaudio: We are establishing a record here, and insofar as the answer to that question is concerned, at any rate I want it fixed as to point of time.

Examiner Walsh: I assume Mr. Stowell means at the beginning of the respondent organization, that is, the predecessor, Bay Area Flower Growers Association.

Is that what you have reference to?

Mr. Stowell: That is correct, Mr. Examiner.

Examiner Walsh: You have established that Mr. Reynolds [70] was connected with the organization at that time, I believe?

The Witness: That is right.

Examiner Walsh: Proceed from there, Mr. Stowell.

Mr. Stowell: Mr. Reporter, would you read back my question?

Examiner Walsh: Before you do that, are you planning to have that letter identified as an exhibit?

Mr. Stowell: Not at this time. I will reserve it for another witness.

(Question read.)

A. All the shippers were called each morning to find out what orders they had to go out, and after we got the total amount we called all the different

(Testimony of Clyde E. Reynolds.)

air lines and routed them out. And of an evening, when we got all the calls made, we would assign them to these designated air carriers, which in turn would haul them to the designated points.

Q. (By Mr. Stowell): At the very outset, who executed the air bills and other papers?

A. We did ourselves.

Q. And by "we" who do you mean?

A. Tal Lloyd and myself.

Q. What financial arrangement did you have with the shippers' group?

A. Merely trucking. I have a letter to the effect that [71] Mr. Zappettini—

Mr. Gaudio: Just a moment. I object to reference being made to a letter that is not in evidence.

Mr. Stowell: At this time will you just answer my question.

Examiner Walsh: Strike that portion referring to the letter.

Q. (By Mr. Stowell): I am going to repeat my question. What financial arrangement did you have with the shippers' group? How much were you paid, and for what?

A. I was paid 50 cents per box.

Q. And what did that cover?

A. That included picking up and hauling to the airport, and assembling for shipment. Or 25 cents a box if some of the shippers hauled them to the airport themselves and dumped them off at the depot.

(Testimony of Clyde E. Reynolds.)

Q. Now, did the 50 cents cover the physical consolidation—and by “consolidation” I mean assembly and segregation of the boxes according to destination? A. It did.

Q. Did it also cover the paper consolidation—and by that I mean the execution of an air bill covering a consolidated shipment with the individual manifest attached thereto? [72]

A. It covered a master bill, yes.

Mr. Stowell: Would you read that question back to him, please?

(Question read.)

A. It did.

Q. How did you receive this money, in what mechanical manner?

A. There were advance charges added to the air bill, and in return the air line would pay me.

Examiner Walsh: What do you mean by “advance charges”?

Mr. Stowell: Mr. Examiner, I propose to offer some documents rather shortly which will illustrate.

Examiner Walsh: I am trying to catch the physical significance.

Q. (By Mr. Stowell): What do you mean by an advance charge?

A. Well, you have the weight and whatever the expense is on hauling the flowers, plus you have an advance charge for your hauling that is added right into the total amount. And the air lines when they

(Testimony of Clyde E. Reynolds.)

collect the total amount they send you back your advance charge.

Examiner Walsh: I see. You do not receive any money until after the flowers are delivered to the consignee and the air carrier remits to you; is that correct?

The Witness: That is right. [73]

Q. (By Mr. Stowell): Did you pay a California transportation tax on the advance charges?

A. I did.

Q. At what per cent? A. Three per cent.

Q. And such tax covered the entire amount of the advance charge, namely, at the rate of 50 cents when you picked it up or 25 cents if the boxes were deposited at the airport; is that correct?

A. That is right.

Q. And the advance charge on the air bill, how did that read, or in whose name was that indicated?

A. Bay Area, just Bay Area.

Mr. Stowell: Mr. Examiner, I would like to refresh the witness' recollection on that.

Q. (By Mr. Stowell): Mr. Reynolds, I show you a copy of an air bill.

Mr. Gaudio: You are not going to impeach his testimony?

Mr. Stowell: No, just correct his testimony.

Q. (By Mr. Stowell): Would you examine this air bill, please. Are you willing to make a correction in your testimony?

A. I am, for the simple reason that before Mr. Barulich came into it I signed Reynolds Brothers,

(Testimony of Clyde E. Reynolds.)

but after he came in [74] it was signed Bay Area thereafter.

Mr. Gaudio: Just a moment. I will ask that the last go out as calling for the conclusion of the witness as to what Mr. Barulich did.

Examiner Walsh: Strike that portion of the answer, leaving the first portion, that he made it out in the name of Reynolds Brothers, and proceed with the questioning, Mr. Stowell.

Q. (By Mr. Stowell): At this time I am primarily interested in the period prior to such time Mr. Barulich entered the picture.

A. That is right, then it was Reynolds Brothers.

Mr. Stowell: Mr. Examiner, at this time I move that this particular document be marked for identification as EA-1.

Examiner Walsh: It will be marked for identification as Enforcement Attorney's Exhibit No. 1.

(The document referred to was marked for identification as Enforcement Attorney's Exhibit No. 1.)

Examiner Walsh: Mr. Stowell, what was the date on that?

Mr. Stowell: It is dated February 8, 1950.

Q. (By Mr. Stowell): Mr. Reynolds, I am going to show you a number of documents, and I would like to have you examine these.

Examiner Walsh: Do you have a number of them? [75]

Mr. Stowell: I have no copies, so I would ap-

(Testimony of Clyde E. Reynolds.)

preciate it if you would come and look at them, Mr. Gaudio.

Q. (By Mr. Stowell): Mr. Reynolds, I now ask you, were these air bills and documents executed by you or by personnel under your supervision and direction? A. They were.

Examiner Walsh: Will you identify them?

Mr. Stowell: Mr. Examiner, I now move that these documents be marked for identification.

Examiner Walsh: Call them off by title and date.

Mr. Stowell: EA 2, Air bill, July 5, 1949, consigned to the Suburban Delivery Service.

Mr. Wolf: Who was the consignor, Mr. Examiner?

Mr. Stowell: It indicates Bay Area as consignor.

EA 3, air bill, consignor Suburban Delivery Service, to S. S. Pennock, dated July 7, 1949.

EA 4 is a flower manifest attached to EA 2.

Examiner Walsh: What is the date on that?

Mr. Stowell: They are all the same date.

EA 5 is another flower manifest, same date, attached to the same air bill.

Examiner Walsh: The foregoing documents will be marked for identification as Enforcement Attorney's Exhibits 2, 3, 4 and 5. [76]

(The documents referred to were marked for identification as Enforcement Attorney's Exhibits Nos. 2 through 5, inclusive.)

(Testimony of Clyde E. Reynolds.)

Mr. Stowell: EA-6, from Bay Area to Suburban Delivery Service, dated June 24, 1949.

EA-7, from SDS—which I presume is Suburban Delivery Service—to Shock Wholesale Florist, dated June 25, 1949.

EA-8, from Suburban Delivery Service to Charles Simon, Jr., & Son, dated June 26, 1949.

EA-9, is a flower manifest, dated June 24, 1949, and attached to the foregoing documents, namely, EA-6.

EA-10, flower manifest dated June 24, 1949, and similarly attached.

EA-11, flower manifest dated June 24, 1949, and attached to the others mentioned.

Examiner Walsh: Does that complete that group?

Mr. Stowell: I have a few more in another group here.

EA-12, dated August 1, 1949, with the following documents attached thereto, which will be given EA numbers:

EA-13, dated August 2, 1949, from Suburban Delivery Service to Louis B. Glick Company.

EA-14, from Suburban Delivery Service to Charles Simon & Sons, August 2, 1949.

EA-15, from Suburban Delivery Service to C. C. Sieck, dated August 2, 1949. [77]

EA-16, dated August 2, 1949, from Suburban Delivery Service to D. R. Smith, Wholesale Florist.

(Testimony of Clyde E. Reynolds.)

EA-17, from Suburban Delivery Service to Markie Florist, dated August 2, 1949.

EA-18, from Western Wholesale Florist to Tidewater Wholesale Florist, dated August 3, 1949.

EA-19, flower manifest, August 1, 1949.

EA-20, flower manifest, August 1, 1949.

EA-21, flower manifest, August 1, 1949.

EA-22, another flower manifest, August 1, 1949.

EA-23, flower manifest, August 1, 1949.

EA-24, another flower manifest, August 1, 1949.

Examiner Walsh: The foregoing documents identified as Enforcement Attorney's Exhibits 6 through 24, respectively.

(The documents referred to were marked for identification as Enforcement Attorney's Exhibits Nos. 6 through 24, inclusive.)

Mr. Stowell: EA-25 is a pool flower shipment delivery notice, dated July 6, 1949.

EA-26 is a receipt from Paul's Wholesale, received from Suburban Delivery Service, dated July 8, 1947. It is probably 1949.

EA-27, flower manifest, dated July 6, 1949.

EA-28 is an air bill from Bay Area Flower Shippers & Growers, Inc., to Suburban Delivery Service, dated August 4, 1949. [78]

EA-29, an air bill from Bay Area to Suburban Delivery Service, dated August 4, 1949.

EA-30, from Bay Area to City Delivery Service,

(Testimony of Clyde E. Reynolds.)

dated August 3, 1949, with the following attached documents:

EA-31, dated August 3, 1949.

EA-32, Bay Area to City Delivery Service, August 3, 1949.

EA-33, Bay Area to City Delivery Service, August 3, 1949.

EA-34, flower manifest, dated August 3, 1949.

EA-35, flower manifest, dated August 3, 1949.

EA-36, flower manifest, dated August 3, 1949.

EA-37, air bill, City Delivery Service to Greenwood Floral, dated August 4, 1949.

EA-38, air bill, City Delivery Service to Lige Green Floral Company, dated August 4, 1949.

EA-39, manifest, dated August 3, 1949.

EA-40, flower manifest, August 3, 1949.

EA-41, flower manifest—cargo manifest, designated from San Francisco to DAL No. 5907.

EA-42 is an American Airlines invoice to City Delivery Service.

EA-43 is an air bill dated July 26, 1949, and has attached thereto the following documents:

EA-44, flower manifest. [79]

EA-45, flower manifest, dated July 26, 1949.

EA-46, flower manifest, dated July 26, 1949.

EA-47, flower manifest, dated July 26, 1949.

EA-48, flower manifest, dated July 26, 1949.

EA-49, flower manifest, dated July 26, 1949.

(Testimony of Clyde E. Reynolds.)

- EA-50, air bill, dated July 26, 1949.
EA-51, air bill, dated July 26, 1949.
EA-52, air bill, dated July 26, 1949.
EA-53, air bill, dated July 26, 1949.
EA-54, air bill, dated July 26, 1949.
EA-55, air bill, dated July 26, 1949.
EA-56, air bill, dated July 26, 1949.
EA-57, air bill, dated July 26, 1949.
EA-58, air bill, dated July 26, 1949.
EA-59, air bill, dated July 26, 1949.
EA-60, air bill, dated July 26, 1949.
EA-61, air bill, dated July 26, 1949.
EA-62, air bill, dated July 26, 1949.
EA-63, air bill, July 26, 1949.
EA-64, air bill, July 26, 1949.
EA-65, air bill, July 26, 1949.
EA-66, air bill, dated March 2, 1950.
EA-67 is an air bill bill of lading, dated March 2, 1950.
EA-68 is an air bill of lading, dated June 10, 1950.
EA-69 is an air bill, dated July 26, 1950. [80]
And EA-70 is an air bill, dated June 10, 1950.
- Examiner Walsh: Is that all you have?
Mr. Stowell: That is right.
- Examiner Walsh: The foregoing documents are identified as Enforcement Attorney's Exhibits Nos. 25 through 70, respectively.

(Testimony of Clyde E. Reynolds.)

(The documents referred to were marked for identification as Enforcement Attorney's Exhibits Nos. 25 through 70, inclusive.)

Q. (By Mr. Stowell): To whose bank account did you deposit the proceeds from the advance charges which were talked about a few minutes ago?

A. Reynolds Brothers.

Q. Did you sign the air bill as agent of the Association? A. I did.

Examiner Walsh: Your own name as agent for the Association?

Mr. Stowell: I didn't ask him that. Did you want to ask him that?

Examiner Walsh: I am trying to get it straightened out as to how he did sign them.

Q. (By Mr. Stowell): The funds which were the proceeds from the advance [81] charges you just testified that they were deposited in your own name. By your own name do you mean that the funds were exclusively for your own use and had no other beneficial owner but yourself?

A. Yes, Reynolds Brothers Transfer.

Q. But the funds were not held in trust for the beneficial use of anyone else but your own company, called Reynolds Brothers Transfer; is that correct?

A. That is right.

Q. Mr. Reynolds, I show you a copy of a letter, dated June 15, 1949, signed by Bay Area Flower Shippers & Growers, Inc., signed "William Zap-

(Testimony of Clyde E. Reynolds.)
pettini to Clyde E. Reynolds." Would you examine this, please.

Did you receive such a letter? A. I did.

Mr. Stowell: Mr. Examiner, I move that this be marked for identification as EA-71.

Examiner Walsh: The document will be marked for identification as Enforcement Attorney's Exhibit 71.

(The document referred to was marked for identification as Enforcement Attorney's Exhibit No. 71.)

Q. (By Mr. Stowell): Can you recall for how long this arrangement continued where you received the 50 cents per box under certain [82] circumstances, and the 25 cents under other circumstances, as you previously testified?

A. I do not have it correct, the beginning and the ending.

Q. Does the date September 23, 1949, mean anything to you in relation to the arrangements which you had with the Association?

A. Is that discontinuing—

Q. You are answering.

A. I don't have the exact beginning of it, or the ending, although it is on file at the office.

Q. From whose funds did you pay Lloyd's salary?

Mr. Gaudio: Who is Lloyd?

Mr. Stowell: He was previously identified as an employee of Reynolds.

(Testimony of Clyde E. Reynolds.)

A. From my own funds.

Q. (By Mr. Stowell): From the funds which you previously described as the Reynolds Brothers Transfer & Storage? A. That is right.

Q. Who owned the office equipment at your operations office at the airport?

Mr. Gaudio: I don't think there has been any operations office Reynolds established at the airport.

Mr. Stowell: There has been, Mr. Examiner.

Examiner Walsh: I believe the testimony was that the [83] premises which Mr. Reynolds occupied at the airport previously are the same as have been occupied by respondent.

A. I believe a desk and a chair belonged to the building that we leased.

Q. (By Mr. Stowell): And can you recall what equipment you owned?

A. A typewriter and adding machine, and two chairs, I believe, and a filing cabinet.

Q. From whose funds did you pay the rent?

A. From Reynolds Brothers Transfer.

Q. How much rent did you pay?

A. Fifty dollars per month.

Q. To whom?

A. A gentleman by the name of Mason. I don't have his correct address.

Q. Does the name Aviation Activities, Inc., mean anything to you in that connection?

A. That is the one.

Q. Was there any kind of a lease arrangement between you and Aviation Activities, Inc.?

(Testimony of Clyde E. Reynolds.)

A. Just monthly only, just rental.

Q. Did you receive a receipt from Aviation Activities, Inc., for payment of the rent?

A. We did.

Q. Do you recall how that receipt was made out? [84]

A. No, I don't.

Q. In whose name was the tenancy held at the airport?

Mr. Gaudio: I submit that calls for a conclusion.

Mr. Stowell: I will rephrase the question.

Q. (By Mr. Stowell): In your understanding with Mr. Mason was anything ever said about who the tenant was at that office?

Mr. Gaudio: Just a moment. I will object to the question as leading and calling for the conclusion of the witness, and also hearsay, without a foundation being laid.

Examiner Walsh: Let us find out first what arrangements were made, if any.

Mr. Gaudio: By whom, where, and under what circumstances.

Q. (By Mr. Stowell): Prior to your moving into this operations office at airport did you contact the Aviation Activities, Inc., people?

A. I did.

Q. To whom did you speak?

A. The mechanic there, working on some spark-plugs, is all I know, and he referred me to Mr. Mason, who was in charge of the incorporation, and through him I rented the building.

(Testimony of Clyde E. Reynolds.)

Q. What did you tell Mr. Mason?

A. Just that I wanted to rent——

Mr. Gaudio: Just a moment, Mr. Reynolds. [85]

I am sort of anticipating what counsel has in mind, I believe, but I submit that unless a foundation is laid as to what his purpose was in going to Mr. Mason it would be irrelevant as to this particular respondent, and certainly as to Mr. Barulich.

Mr. Stowell: Mr. Examiner, these are preliminary questions which are designed to show the tie-up between the renting of the building by Bay Area and the continuity of behavior later on carried on by these respondents. This is historical material which has a direct line of bearing or connection with the present behavior of the respondents.

Examiner Walsh: Let Mr. Reynolds testify as to what conversations he had with respect to the rental or the leasing of this building, and whoever he talked to, and give us some of the gist of the conversation, the details of the arrangements.

Q. (By Mr. Stowell): What was the conversation between you and Mr. Mason about this building?

Mr. Gaudio: Just a moment. I assume that Mr. Reynolds, unless my objection is overruled, in going to Mr. Mason would say that he was going there in some capacity on behalf of Consolidated Flower Growers and Shippers Association.

Mr. Stowell: Not necessarily.

Mr. Gaudio: Then without a foundation to that

(Testimony of Clyde E. Reynolds.)

effect [86] I object to the question as calling for hearsay testimony as to Mr. Barulich, and not relevant to the issues as to Bay Area, who is respondent in this proceeding.

Mr. Stowell: This witness testified that he had an operations office at the airport wherein he conducted his trucking business, which was so conducted in connection with Bay Area. Therefore, there is a very definite connection between showing the conversations as to how he secured the lease or tenancy for this office at the airport, and since the witness has already given this testimony as a foundation, I am merely trying to show the nature of the arrangements.

Examiner Walsh: I will allow the witness to testify in his own words as to what the conversations were, and he may recite the details.

The Witness: The shippers felt that they needed an office, somebody at the airport at all times, so when they called, somebody there could make arrangements with the air lines. As an extra service they figured somebody was needed at the airport at all times.

So I went to Mr. Mason and acquired this building for an office.

And we hired a man, Tal Lloyd, to handle the operations, and we paid \$50 a month rent for the building, which came out of Reynolds Brothers' funds.

Q. (By Mr. Stowell): What [87] did you tell Mr. Mason when you sought to rent this office?

A. That we needed an office.

(Testimony of Clyde E. Reynolds.)

Q. When you say "we," to whom are you referring?

A. Bay Area needed the office. As an agent for Bay Area I said we needed an office for this operation.

Q. Did you use those words to Mr. Mason, that you as an agent for Bay Area—

A. I don't recall the exact words I used, but—

Mr. Gaudio: I submit he has already testified, Mr. Examiner, that as an agent for Bay Area and the shippers he approached Mr. Mason.

Now I think counsel is trying to have the witness recant his testimony and perhaps cast a reflection on it that might not be acceptable to Mr. Stowell. But I would like the witness' testimony to stand as given, unless he himself wants to explain it.

Examiner Walsh: Proceed.

Q. (By Mr. Stowell): How did you pay Mr. Mason? A. By check.

Q. Who signed the check?

A. I signed the check—I or my brother.

Q. Was there anything on the check, any kind of entry or notation of any kind, that indicated that it was a check [88] other than one issued by you for payment of rent for those premises?

Mr. Gaudio: Just a moment. I submit we should have the check if we are going to indulge in what the check showed, Mr. Examiner, if it is available. I assume it might be.

Mr. Stowell: Do you have those checks?

(Testimony of Clyde E. Reynolds.)

The Witness: We do have. All records are kept for four years. He should know that. And we would have them on file.

Examiner Walsh: Would you submit the cancelled checks for the record?

The Witness: I could.

Q. (By Mr. Stowell): Do you have any correspondence which was addressed to you by Mr. Mason or the Aviation Activities Company in connection with these premises?

A. Nothing other than cancelled checks, to my knowledge.

Q. What forms were used in the conduct of your operations for Bay Area?

A. You mean the manifests that were thought up later? We have them on file. Before they were just ordinary——

Q. Who supplied the forms, the manifests and things which you used?

A. In the beginning the air lines, but later on Bay Area [89] got manifests of their own which were made up under the heading of Bay Area Flower Shippers Association.

Q. I show you a form which reads "Flower Manifests," and ask you if this is the form which was supplied by Bay Area.

A. I believe it is. Yes, it is.

Q. Did you have anything to do with drawing up this form?

A. I might have had a suggestion, but I don't

(Testimony of Clyde E. Reynolds.)

know. I think the board decided on what manifests they would have.

Q. Can you recall what suggestion you may have made about this form?

A. No, other than just so many copies. I believe that is all that I might have suggested.

Mr. Stowell: Mr. Examiner, I move that this form be marked for identification as EA-72.

Examiner Walsh: The copy of the form is marked for identification as Enforcement Attorney's Exhibit 72.

(The document referred to was marked for identification as Enforcement Attorney's Exhibit No. 72.)

Q. (By Mr. Stowell): Can you tell me who executed this flower manifest which I just showed you?

Mr. Gaudio: Just the form itself? [90]

Mr. Stowell: I am interested in getting at a description of the procedure of how he operated.

A. No, I think the Board of Directors decided on what manifests were to be used, and it was drawn up through the shippers themselves.

Q. (By Mr. Stowell): Mr. Reynolds, I had in mind when a shipper had a shipment that he picked up, when did the flower manifest first arrive in the procedure?

A. The shipper filled it out himself, then the trucker came, and he picked up the manifest with the box of flowers, and took it to the airport.

(Testimony of Clyde E. Reynolds.)

Q. What type of information would the manifest show?

A. Consignor and consignee, and the weight.

Q. Did you use these manifests as a basis for calculating a pro-ration of the airfreight and other charges? A. Yes.

Q. Did you receive any compensation from the Association?

A. Nothing other than hauling, what I got paid per box, that is the only compensation I got.

Q. Did you receive that per box hauling fee which you referred to from the Association, or from whom did you actually receive the physical receipt of that money? [91]

A. The air lines. Actually it was from the consignee, I believe paid for it, but the air lines in return gave it to me. That was an advance charge added to the flowers, which was collected from the consignee and returned through the air line to me.

Examiner Walsh: Was it by check, Mr. Reynolds?

The Witness: Yes.

Examiner Walsh: And in whose name was that check made out?

The Witness: Reynolds Brothers.

Q. (By Mr. Stowell): Were you personally acquainted with the business of the members of the Bay Area group? A. Yes.

Q. Would you describe that business, please.

A. Wholesale flower shippers.

(Testimony of Clyde E. Reynolds.)

Q. Were there any flower growers, wholesalers?

A. Yes.

Q. Were these flower growers competitors?

Mr. Gaudio: Just a moment.

Mr. Stowell: If you know.

Mr. Gaudio: I will object to the question as irrelevant, incompetent and immaterial.

Mr. Stowell: I will rephrase the question.

Examiner Walsh: Do you withdraw it? [92]

Mr. Stowell: I will withdraw it.

Q. (By Mr. Stowell): From your knowledge of the air bills and the delivery manifests, did you ever observe that a number of the members of the Bay Area group shipped to the same consignee?

Mr. Gaudio: If you remember, Mr. Reynolds.

I don't know the purpose of this.

Examiner Walsh: That is all he can do, is to testify as to his recollection.

Mr. Stowell: The purpose was to show that these flower growers were competitors.

Mr. Gaudio: I submit that that question is not involved before the Board, Mr. Examiner, as to whether they are competitive or not.

Mr. Stowell: Mr. Examiner, I believe the status of Bay Area as a bona fide association requires information about the type of business the members do, whether the Association has an economic interest in the goods shipped, whether they are competitors, whether it is a true association where the members cooperate, or whether basically there are conflicting interests between the members of the Association

(Testimony of Clyde E. Reynolds.)

such as competition and other inconsistent interests of the members to each other.

And if the Examiner does not allow me to ask him [93] directly as to whether he personally knew whether these other flower growers were competitors, I have no alternative but to phrase the questions indirectly, and find out whether these growers shipped to the same consignees.

Examiner Walsh: I believe the record would be illuminated somewhat if we had some information on that. I will allow the witness to answer.

A. Yes, they were.

Examiner Walsh: Try to give us some sort of a detailed statement with respect to that.

The Witness: Take a large wholesaler in the East, he buys from several shippers, regardless of whether they are competitive or not. They all ship to this one wholesaler, and in turn he resales them out.

Q. (By Mr. Stowell): Do you have any knowledge as to the management of the corporate funds of Bay Area at the time when you were trucking?

A. No, I don't.

Q. Do you know who, for example, paid for the manifests?

A. The shippers paid for them, but they were prorated out as they got them. As the shippers got them they paid the consolidation so much per box or per manifest.

Q. Have you already testified as to who the

(Testimony of Clyde E. Reynolds.)

Board of Directors of Bay Area were [94]
when—— A. I believe I have.

Q. Can you tell us when Mr. Barulich entered
the picture?

A. I do not have the exact date.

Q. September, 1949, is that an approximate date?

A. I do not have that information.

Examiner Walsh: I wonder if that couldn't be
stipulated, the date on which Mr. Barulich entered
the organization.

Mr. Gaudio: Yes. I assume that Mr. Barulich
will develop that in full when he takes the stand.

Mr. Stowell: Could you give us that date now?

Mr. Gaudio: There are some records that will
establish it.

Mr. Stowell: At this point, I want to get the
continuity of what happened.

Mr. Gaudio: Do you have the copy of the min-
utes of the meeting of the Board of Directors first
mentioning Mr. Barulich replacing Mr. Reynolds,
when he was first introduced in the organization?

Mr. Stowell: I don't know.

Let's assume a certain date, subject to correction.
Let's assume September, 1949.

Does that sound all right?

Mr. Gaudio: Subject to correction. That is ap-
proximately correct, yes. [95]

Mr. Stowell: Subject to correction, yes.

Q. (By Mr. Stowell): Of your knowledge, did

(Testimony of Clyde E. Reynolds.)

Mr. Barulich come into fill an existing vacancy?

A. Yes.

Q. Whose vacancy?

A. Traffic Manager. We at that time had no traffic manager other than myself and Tal Lloyd, and the Association felt that they needed a traffic manager to perform the duties, and I assumed at the time it was to take Tal Lloyd's place, but later I found out it was not.

Q. At the time when Mr. Lloyd left Mr. Barulich was hired?

A. No, that is wrong. Mr. Barulich came in, and my understanding was that he was to be a traffic manager.

Mr. Gaudio: Just a moment. If it relates to an understanding between Mr. Barulich and the Association, I submit it calls for a conclusion of the witness, without a foundation.

Examiner Walsh: Just state what your knowledge of it is.

Mr. Stowell: Just give us your personal knowledge.

The Witness: That is my understanding. Mr. Lloyd was kept on, and they were both paid. I was assessed ten cents a box for Mr. Barulich being on, which was agreeable to [96] me at the time, but later on I went back to the Association and felt that he was doing me no good, as far as the money coming out of my pocket, and I wanted them to reimburse him, and they would not.

Q. (By Mr. Stowell): Can you recall about

(Testimony of Clyde E. Reynolds.)

what period of time there were three people involved in this setup—that is, yourself, Mr. Barulich and Mr. Lloyd?

A. From the time Mr. Barulich came in, until we cancelled out the contract, there were three employees there.

Q. During such period, at least at the beginning of the time when these three people were there, you continued to pay Mr. Lloyd's \$80 a week out of your own funds, is that correct?

A. That is right.

Q. Did you pay Mr. Barulich anything?

A. Yes, I paid him the prorated fee per box.

Q. How much per box?

A. Ten cents per box for what I picked up, and what was delivered to the fields he got five cents per box.

Q. From whose funds were such payments made to Mr. Barulich?

A. From my funds, Reynolds Brothers.

Mr. Stowell: In order to refresh your recollection, Mr. Reynolds, I am going to show you a tabulation which has [97] been prepared from records which you made available to the Enforcement Attorney, and ask you to state whether it is an accurate record of payments made to Mr. Barulich from your check stubs and check books.

Examiner Walsh: Let's take about a five-minute recess at this time.

(Short recess.)

Examiner Walsh: Come to order, gentlemen.

During the recess the Enforcement Attorney requested that the testimony of Mr. Reynolds be interrupted at this time so that he might call Mr. Lee to give his testimony.

(Witness temporarily excused.)

Examiner Walsh: Mr. Lee is now on the stand. Whereupon,

WILLIAM R. LEE

was called as a witness for and on behalf of the Enforcement Attorney, and having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Stowell:

Q. Would you give the reporter your full name, please. A. William R. Lee.

Q. What is your occupation, Mr. Lee?

A. Wholesale Florist. [98]

Q. Mr. Lee, did you bring with you certain records which were subpoenaed?

A. Yes, I did.

Q. May I have them, please?

Mr. Lee, I will ask you when you first heard the name of Bay Area Flower Growers & Shippers, Inc.?

A. I don't recall the exact year, but I think it was possibly about three or four years ago.

Q. Is it correct, Mr. Lee, that you were sub-

(Testimony of William R. Lee.)

poenaed to bring with you flower manifests for shipments made by Consolidated Flower Growers and Shippers, Inc.? A. That is correct.

Q. Would you indicate, after I conclude reading from these manifests, whether the information is exactly as is indicated thereon.

February 25, 1950, shipper Lee Brothers, consignee Linwood Wholesale Florist, Detroit, Air Bill No. FT-39858.

Flower manifest, March 4, 1950, shipper Lee Brothers, consignee Linwood Wholesale Florist. This particular manifest has a mark at the bottom, Reynolds \$1.03, and there were two boxes shipped.

March 7, 1950, flower manifest, has a notation RB \$1.03, two boxes, to Linwood Wholesale.

March 9, 1950, manifest, notation RB \$1.03, shipper Lee Brothers, consignee Linwood Wholesale, Detroit. [99]

March 11, 1950, flower manifest, shipper Lee Brothers, consignee Linwood Wholesale Florist, two boxes, with the notation RB \$1.03.

March 21, 1950, shipper Lee Brothers, consignee Linwood Wholesale, one box, Reynolds notation 52 cents.

Flower manifest, April 17, 1950, shipper Lee Brothers, consignee Linwood Wholesale, Reynolds Brothers \$1.03.

Manifest, April 19, 1950, shipper Lee Brothers, Reynolds Brothers notation \$1.03, two boxes, to Linwood Wholesale Florist, Detroit.

(Testimony of William R. Lee.)

Flower manifest, April 22, 1950, shipper Lee Brothers, consignee Linwood Wholesale, one box, notation RB 52 cents.

Flower manifest, dated April 22, 1950, total boxes one, notation RB 52 cents, consignee Linwood Wholesale Florist.

April 24, 1950, shipper Lee Brothers, consignee Linwood Wholesale, Reynolds Brothers notation \$1.03.

Flower manifest, April 26, 1950, shipper Lee Brothers, consignee Linwood Wholesale, two boxes, notation RB \$1.03.

April 27, 1950, shipper Lee Brothers, consignee Linwood Wholesale Florist, two boxes \$1.03.

Manifest, May 1, 1950, shipper Lee Brothers, consignee Linwood Wholesale, two boxes.

May 2, 1950, manifest, shipper Lee Brothers, consignee Linwood Wholesale, two boxes. [100]

Manifest, May 5, 1950, Lee Brothers, shipper, Bay Area what was the occasion? Did someone re-boxes, RB \$1.03.

Manifest, May 8, 1950, shipper Lee Brothers, consignee Linwood Wholesale Florist, notation at the bottom RB \$1.03, two boxes.

Tuesday, May 9, 1950, shipper Lee Brothers, consignee Linwood Wholesale Florist, one box, Reynolds 52 cents.

May 11, 1950, manifest, shipper Lee Brothers, consignee Linwood Wholesale, one box, notation RB 52 cents.

(Testimony of William R. Lee.)

Shipper Lee Brothers, flower manifest, dated May 16, 1950, consignee Linwood Wholesale, total boxes two, notation RB \$1.03.

Flower manifest, Monday, May 15, 1950, consignee Linwood Wholesale, two boxes, with notation RB \$1.03.

Shipper Lee Brothers, on manifest dated May 18, 1950, to Linwood Wholesale, two boxes, RB \$1.03.

Manifest, dated May 23, 1950, shipper Lee Brothers, one box and two hampers, consignee Linwood Wholesale.

Manifest, dated May 22, 1950, shipper Lee Brothers, consignee Linwood Wholesale, two boxes, notation RB \$1.03.

Manifest dated May 25, 1950, shipper Lee Brothers, consignee Linwood Wholesale, notation RB 52 cents.

Manifest, dated May 27, 1950, shipper Lee Brothers, consignee Linwood Wholesale, five boxes, with notation RB \$2.58. [101]

Flower manifest, May 29, 1950, shipper Lee Brothers, consignee Linwood Wholesale, total of four boxes, notation RB \$2.06.

Manifest, dated May 30, 1950, shipper Lee Brothers, going to Linwood Wholesale, three boxes, notation RB \$1.55.

Manifest, dated May 31, 1950, shipper Lee Brothers, consignee Linwood Wholesale, total boxes three, and notation RB \$1.55.

Flower manifest, dated June 1, 1950, shipper Lee

(Testimony of William R. Lee.)

Brothers, to Linwood Wholesale, four boxes, with a notation of \$2.06.

Manifest, dated June 3, 1950, shows three boxes, \$1.55, for Reynolds, Linwood Wholesale as consignee.

Manifest, dated June 5, 1950, shows five boxes going from Lee Brothers to Linwood Wholesale, RB \$1.258.

Manifest, dated June 6, 1950, from Lee Brothers to Linwood Wholesale, four boxes, RB \$2.06.

Mr. Lee, I just read you from those manifests. Is that a correct reading of the information contained therein? A. That is correct.

Q. And those manifests reflect shipments which you made via the Bay Area Service for the dates indicated? A. That is right.

Q. And to the consignees indicated? [102]

A. That is right.

Q. Mr. Lee, when you started shipping over Bay Area what was the occasion? Did someone request that you ship, or was it your own idea?

A. It was requested by the consignee.

Q. What procedure did you follow to make those shipments over Bay Area?

A. The girl in the office, the shipping department, just called, I believe it was Mr. Reynolds, to pick up the shipments.

Q. I see. Were any questions asked about membership? A. You mean of the girl?

Q. Yes. A. No.

(Testimony of William R. Lee.)

Q. Are you acquainted with Mr. John C. Barulich, who sits at the counsel table of respondents?

A. Yes, I am.

Q. Has he ever been in your office?

A. Yes, he has.

Q. How many times?

A. I would say about three or four times.

Q. Can you recall the substance of your conversations with Mr. Barulich on those various occasions?

A. I don't recall exactly the conversation now, but it was concerning membership in the Bay Area Association. [103]

Q. Did Mr. Barulich ask you to join the Bay Area Association? A. Yes, he did.

Q. Did he mention a membership fee?

A. I don't recall whether he did or not.

Q. Did he mention that in order to become a member you would have to fill out a membership application?

A. I think there were contracts, agreements, to be signed.

Q. Can you remember whether he so stated?

A. No, I don't recall whether he did or not, but I believe he knew that I was familiar with the usual agreements that go with the contract.

Q. Did he suggest shipping your merchandise over Bay Area for a trial period before joining?

Mr. Gaudio: Mr. Examiner, the witness testified that Mr. Barulich was in his office on a couple of occasions, although the dates we don't have, and

(Testimony of William R. Lee.)

talked very briefly, and he suggested that he be a member. I haven't objected because I want to get this witness behind us, but I think we ought to have a more accurate foundation, and I certainly object to leading questions. I can't anticipate what objection to make if I have a valid objection, if a leading question is asked.

Examiner Walsh: Rephrase your question, and let's try [104] to have the testimony in a little more positive form.

If we run into a negative reply, don't predicate any questions on anything that might have been developed if the answer to that question should be in the affirmative, if you know what I mean. I would like a little more continuity in the questioning.

Q. (By Mr. Stowell): Can you recall whether Mr. Barulich's visits preceded the time that you made these shipments, or did any of Mr. Barulich's visits precede the time of such shipments?

Examiner Walsh: If you recall.

Mr. Stowell: If you recall, Mr. Lee.

A. I couldn't say exactly whether they preceded or followed his visits.

Q. (By Mr. Stowell): Have you ever been a member of Bay Area? A. No.

Q. Have you ever made any sort of payments to Bay Area by way of dues or initiation fees?

Q. Have you ever made an application to Bay Area for membership? A. No.

(Testimony of William R. Lee.)

Q. Mr. Lee, I show you a document which has on it the heading: "Consolidated Flower Shipments, Inc., Bay Area," with a little pink slip attached: "Notice to All Members: [105] The attached memorandum of rates prepared at the request of the members for the determining of decorative greens rates by air as offered to the various listed destinations by the various listed air lines."

Have you ever seen this document before?

A. No, I have never seen this document.

Mr. Stowell: I have no further questions, Mr. Examiner.

Examiner Walsh: Cross-examination, Mr. Gaudio.

Cross-Examination

By Mr. Gaudio:

Q. Mr. Lee, when you met Mr. Barulich, was that the first knowledge you had of the existence of Bay Area, or was it some prior knowledge?

A. I had knowledge about it previous to that.

Q. From whom did you first learn about Bay Area?

A. From Mr. Decia and Mr. Reynolds, I believe, originally.

Q. As between them, which one, Mr. Reynolds?

A. They both called on me.

Q. Both called on you at the same time?

A. Yes, that is right.

Q. When was this?

(Testimony of William R. Lee.)

A. I can't recall the exact date. It would be approximately three or four years ago. [106]

Q. Before the first occasion of your shipment on February 25, 1950? A. Yes, it was.

Q. And prior to that time, I take it, you never had shipped anything via Bay Area?

A. I don't know whether we shipped prior to the time Mr. Barulich called on us——

Q. I am speaking of the conversation with Mr. Reynolds.

A. No, I don't believe they had organized, and they weren't in business at that time. Prior to the time they called on us, to my knowledge.

Q. And was the conversation which you had with Mr. Reynolds and Mr. Decia relative to your becoming a member? A. Yes.

Q. Did you accept to participate in the organization at that time? A. No.

Q. Did they present to you a document which you should sign? A. They did.

Q. And you didn't sign it?

A. No, I didn't.

Q. You refused to become a member as suggested by them? A. That is correct. [107]

Q. And when you, as you say, were requested by Linwood Wholesalers, the Florist, to ship via Bay Area? A. That is correct.

Q. Was that before this first shipment on February 25, 1950?

A. Was a request made from the consignee before that time?

(Testimony of William R. Lee.)

Q. Yes. A. Yes, prior to the shipment.

Q. And had you had your conversation already with Mr. Reynolds? A. I believe so.

Q. When you received that request did you communicate with him at all?

A. Only to the extent of telling him we had boxes for him, had shipments for him.

Q. What did he do?

A. He picked up the boxes.

Q. At that time did you discuss further the question of your possible membership in the group?

A. No.

Q. Was Mr. Barulich with the organization in February, 1950? A. That I can't answer.

Q. You don't remember? [108]

A. I don't remember.

Q. Did you call anyone or discuss the question with anyone other than Mr. Reynolds at that time as to whether you should deliver these boxes for handling by Mr. Reynolds or Bay Area?

A. No, I didn't speak to anyone else. In fact, I didn't speak to anyone at all. The girl in the office was the one that called for the truck to drop by to pick up the boxes.

Q. Do you mean that you didn't have any knowledge of the fact that Mr. Reynolds was picking up boxes via Bay Area? A. Yes.

Q. When did you first discuss with Mr. Reynolds or have any communication with him that he was to pick up your shipments for Detroit?

(Testimony of William R. Lee.)

A. It was just taken for granted. We knew that he was handling the shipments, so we called him.

Q. So you had no discussions with Mr. Reynolds, then, as to whether you should or should not deliver the boxes to him for handling? A. No.

Q. And you had no discussions with anyone of Bay Area whether you should or should not; is that correct? A. That is correct. [109]

Q. Have you shipped anything since June 6, 1950, via Bay Area?

A. Not according to our records. At least, we couldn't find any other manifests aside from these.

Q. Have you any explanation for your discontinuance of shipments via Bay Area to Linwood Wholesalers in Detroit?

A. The reason why we didn't ship it was because we felt that there was some talk that we couldn't ship through Bay Area without becoming members, so we just told the customer we didn't have that service available for him.

Q. Did Mr. Barulich tell you that?

A. No.

Q. Did Mr. Reynolds tell you that?

A. No.

Q. Do you know who it was that told you?

A. We just assumed it, because there was some talk going on that we couldn't ship as members.

Q. When you say "we" are you including yourself, Mr. Lee?

A. I am including our firm.

(Testimony of William R. Lee.)

Q. Your firm isn't testifying. You are testifying. Are you including yourself?

A. That is right.

Q. Now, do you have any knowledge as to where this information, as you refer to it, developed, that Bay Area [110] couldn't handle your account?

A. No, I don't.

Q. So, if there was any such information, it was because someone else told you or told some other member of your firm? A. That is right.

Q. And that is the only reason you can assign at this time for discontinuing the use of Bay Area's facilities? A. That is correct.

Q. Did any representative of Bay Area since June 6, 1950, notify you in so many words or to the effect that unless you were a member of Consolidated Flower Shipments, Inc., Bay Area, you could not avail yourself of the service?

A. No, not to my knowledge.

Q. Not to your knowledge? A. No.

Q. How many members are there in your firm?

A. We have an office staff of four.

Q. Are you the sole proprietor or is it a partnership? A. It is a partnership.

Q. Who is the other member?

A. Harry W. Lee, Frank Young, and Mrs. S. Lee.

Q. Do you know whether they had had any conversations with representatives of Bay Area regarding the use of their [111] service? A. No.

(Testimony of William R. Lee.)

Q. So apparently, if I understand your testimony correctly, someone, either yourself, or a member of your firm, assumed—

A. Assumed that we couldn't ship by them, not being members. I, myself, assumed that.

Q. Unless you were members?

A. That is right.

Q. And not seeing fit to become a member or apply for membership, you discontinued the use of their service, is that correct?

A. That is correct.

Mr. Gaudio: No further questions.

Examiner Walsh: Mr. Wolf?

Mr. Wolf: No questions.

Mr. Stowell: I have just one or two.

Redirect Examination

By Mr. Stowell:

Q. Mr. Lee, do you have any personal knowledge as to whether any other people, non-member growers or wholesalers in this area—that is non-members of Bay Area—ever shipped via Bay Area's service?

A. I have no knowledge of that.

Q. Is it a fact, Mr. Lee, that these flower manifests [112] reflect flower shipments which you made, and which were subsequently consolidated by Bay Area into consolidated shipments?

Mr. Gaudio: If he can answer that question.

Mr. Stowell: If you can answer it.

(Testimony of William R. Lee.)

A. It is my understanding that they would be consolidated.

Q. (By Mr. Stowell): Do you have the copies of the air bills which go with these manifests?

A. I don't believe we have.

Q. Did you ever receive such copies of air bills?

A. I don't think so.

Q. Do you have any knowledge as to what this entry means on these manifests, "Adjust to Charge \$35.63?" For example, on the manifest dated June 6, 1950.

A. My understanding is that that charge is the consolidated charge for that particular shipment.

Mr. Stowell: No further questions, Mr. Examiner.

Examiner Walsh: Recross, Mr. Gaudio?

Mr. Gaudio: Yes.

Recross-Examination

By Mr. Gaudio:

Q. Were these consignment sales?

A. No. [113]

Q. These were straight shipments?

A. That is right.

Q. So you don't know whether they were consolidated or not, then? A. No, I don't.

Q. Mr. Lee, I show you a letter dated April 4, with a number of blank lines apparently for signatures. Have you ever seen a document like this before? A. No, I haven't.

(Testimony of William R. Lee.)

Q. Was one such document like this ever presented to you by a man by the name of Reynolds, of Reynolds Brothers Transfer & Storage Company, or Mrs. Decia?

A. No, I have never seen this document.

Mr. Gaudio: Thank you.

Mr. Stowell: I have no further questions.

Mr. Wolf: I have a question.

Examiner Walsh: Mr. Wolf.

Q. (By Mr. Wolf): Mr. Lee, you testified in answer to a question several times that you were requested to ship by Bay Area—that is, your consignee requested you, and you did ship via Bay Area. What do you mean by that answer, that you did ship via Bay Area?

A. That we did ship via Bay Area?

Q. Yes. What does that mean? [114]

A. Well, we routed the shipment through Bay Area. In other words, they picked up the shipment, and I suppose forwarded it on through whatever air line they used.

Mr. Wolf: Thank you. No further questions.

Examiner Walsh: Are there any further questions?

Mr. Gaudio: Nothing further.

Examiner Walsh: You may be excused. Thank you, Mr. Lee.

(Witness excused.)

Examiner Walsh: Show Mr. Reynolds resuming the stand.

Whereupon,

CLYDE E. REYNOLDS

resumed the stand, was examined, and testified further as follows:

Direct Examination
(Continued)

By Mr. Stowell:

Q. Mr. Reynolds, did I just show you copies of manifests from which I read pertinent information into the record a short time ago?

A. You did.

Q. From your examination of such manifests would it be your testimony that they in fact comprised consolidated shipments over Bay Area?

A. Yes.

Q. Prior to the recess, Mr. Reynolds, we were discussing [115] payments which you made to John C. Barulich.

Would you examine this chart, please. This chart is a listing of the Reynolds Brothers checks issued to John C. Barulich. Is that an accurate listing of the checks and check numbers taken from your personal check stubs and records?

A. To the best of my knowledge. Of course, I can't remember the figures.

Examiner Walsh: Was Mr. Reynolds present at the time?

Q. (By Mr. Stowell): Was this done in your

(Testimony of Clyde E. Reynolds.)

presence by a member of the Civil Aeronautics Board? A. Yes.

Q. And was this shown to you at the time?

A. I believe not. I believe it was shown to Mrs. Serel, our bookkeeper, but she had the records in a book, and she had taken the records right out of the books, which had been audited.

Q. All right.

Mr. Stowell: At this time, I intend to read from this list: Check No. 1565, dated December 22, 1949, amount of \$72, endorsed by Mr. Barulich.

Check No. 1592——

Mr. Examiner, I wonder if it would be agreeable to have these figures copied into the record by the reporter in lieu [116] of my reading them at this time.

Mr. Gaudio: That will be agreeable, if it is understood that Mr. Reynolds will adopt the chart as his testimony.

Q. (By Mr. Stowell): Mr. Reynolds, do you adopt this chart as your testimony, in lieu of my reading it and asking you whether these individual items in fact were taken from your records, and so forth? A. Yes, I do.

Examiner Walsh: Are you going to have it copied into the record, then?

Mr. Gaudio: Just a moment, Mr. Wolf, if you will please not examine that. That is in connection with a motion.

Mr. Stowell: I am sorry. Do you want this to go into the record?

(Testimony of Clyde E. Reynolds.)

Mr. Gaudio: Well, that is part of the objection.

Examiner Walsh: What is that now? I do not quite follow.

Mr. Gaudio: It didn't occur to me until I saw Mr. Wolf reading it. But it relates to income payments of Mr. Barulich by Mr. Reynolds, and I am objecting in connection with our motion.

Mr. Stowell: We can do this. I will state at this time that I will reserve this for the executive session.

Mr. Wolf: Mr. Examiner, it is quite true that we are [117] not interested in Mr. Barulich's private income in any way whatsoever, but payments of this nature by one agent or employee of Bay Area, the respondent in this case, to another employee of Bay Area, I wouldn't think would be particularly confidential.

Examiner Walsh: We have Mr. Reynolds' statement for the record that the listing is a true and correct listing of the checks which he had written to Mr. Barulich. We can have that as a part of the public record, and we can reserve this whole thing, the total figure there, to be taken in executive session.

Do you understand what I mean?

Mr. Stowell: I am sorry.

Examiner Walsh: Mr. Reynolds has already verified that this statement that you have drawn up is a true reflection of the checks which he drew in favor of Mr. Barulich.

(Testimony of Clyde E. Reynolds.)

Now, you can read into the record the dates of these checks now, and we can reserve the amounts and the total figure to be taken in executive session.

Mr. Stowell: At this time, then, I will ask the reporter to copy into the record merely the check numbers and the dates, and the balance of the information will be offered at the executive session.

(The information referred to is as follows.) [118]

| Number | Date |
|------------|----------|
| 1565 | 12-22-49 |
| 1592 | 1- 4-50 |
| 1630 | 1-14-50 |
| 1645 | 1-20-50 |
| 1670 | 1-31-50 |
| 1719 | 2-15-50 |
| 1745 | 2-24-50 |
| 1759 | 3- 6-50 |
| 20 | 3-22-50 |
| 1801 | 4- 2-50 |
| 1816 | 4-12-50 |
| 1923 | 5-16-50 |
| 1946 | 5-27-50 |
| 1965 | 6- 5-50 |
| 2004 | 6-16-50 |

Mr. Wolf: Mr. Examiner, so that I do not have to examine that document, would counsel tell us over what period of time this extended?

Examiner Walsh: Yes, he can do that.

(Testimony of Clyde E. Reynolds.)

Mr. Stowell: The first entry is December 22, 1949, and the last entry is June 16, 1950. The last check which was observed in Mr. Reynolds' records was that one.

Examiner Walsh: Let me make a statement. That does not [119] mean that you will be precluded from cross-examining on any of this data, because you will be permitted to do that at the executive session.

Do we understand each other?

Mr. Wolf: I see.

Mr. Stowell: Mr. Examiner, it is my understanding that at the executive session counsel for the complainants would be excluded.

Examiner Walsh: No, sir. They will be sworn to secrecy, but they will not be excluded.

Mr. Wolf: I see.

Examiner Walsh: Airborne is a party to this proceeding for the purpose of having this complaint decided.

Q. (By Mr. Stowell): In order to summarize part of your testimony for a certain period of time, there were three people in that office, there was yourself, there was Mr. Barulich, and Mr. Lloyd, and Mr. Lloyd received a salary from your funds of \$80 a week. A. That is right.

Could I correct that?

Q. Yes.

A. There were two in the office. That is, Mr. Barulich and Mr. Lloyd, and I was on a truck.

(Testimony of Clyde E. Reynolds.)

Q. I am sorry. And Mr. Barulich received this ten cents [120] per box payment from your funds, and was that subsequently changed, that ten cents per box arrangement? A. Not to my memory.

Q. I show you a draft of an agreement between yourself and the various members of the Bay Area group, which indicates that you would receive 40 cents per box for flowers for pick-up.

Would you examine this, please.

Was this agreement executed in connection with the inauguration of ten cents per box payments to Mr. Barulich? A. It was.

Q. Can you remember when you began paying Mr. Barulich 20 cents per box?

A. I don't remember paying him 20 cents a box.

Mr. Stowell: I am sorry, I——

Mr. Gaudio: I was going to object.

Q. (By Mr. Stowell): Was the ten cents per box payment ever changed?

A. Not as long as I was its agent.

Q. Could you tell me what Mr. Barulich's actual performance of duties was while he and Mr. Lloyd occupied the office at the airport?

Mr. Gaudio: Just a moment. That calls for his conclusion, since it refers to a contract of employment, presumably had with Bay Area. [121]

Is that what you are referring to?

Mr. Stowell: Mr. Examiner, it calls for observation——

Examiner Walsh: One at a time. I will hear you, Mr. Stowell.

(Testimony of Clyde E. Reynolds.)

Mr. Stowell: Mr. Examiner, it calls for observation of the duties. I do not mean the duties as created in a job description, but I mean the duties in so far as he was able to observe them, the actual performance of duties.

Examiner Walsh: Mr. Gaudio, do you have any statement with respect to that?

Mr. Gaudio: I think the form of the question is bad. I think what he wants to know is what did he see Mr. Barulich do. If he is referring to what Mr. Barulich's duties were pursuant to a contract of employment, which I assume he has reference to, then that contract with Bay Area would call for his conclusion, unless he were a party subscribing to that agreement.

Examiner Walsh: Do you have a contract executed by Mr. Barulich with Bay Area?

Mr. Stowell: Not with this witness.

Let me rephrase the question.

Q. (By Mr. Stowell): What did you observe Mr. Barulich doing while he occupied the operations office at the airport?

A. Frankly, nothing that wasn't already being done. [122] He was hired as a traffic man by the Association, which was the cause of all the misunderstanding.

Mr. Gaudio: Just a moment. I will ask that the answer be stricken as not responsive.

Examiner Walsh: The latter part of the answer will be stricken.

(Testimony of Clyde E. Reynolds.)

Q. (By Mr. Stowell): Just state if he solicited people, to your knowledge. Just what did you see him do?

Examiner Walsh: Let's have Mr. Reynolds' statement as to what his understanding was of Mr. Barulich's duties and what he was supposed to do. We have a relationship established here between Mr. Reynolds and the Association and Mr. Barulich. Now let's hear what the witness has to state as to his understanding.

The Witness: My understanding was, like I stated before, that Mr. Barulich came in to relieve Tal Lloyd, which was acting as a traffic manager as far as we were concerned. He was doing all the routing and checking on any claims there might have been, and he was taking all orders.

My understanding was that Mr. Barulich when he came in was to relieve Mr. Lloyd in this job, but it didn't work out that way. [123]

Q. (By Mr. Stowell): After Mr. Barulich came in did Mr. Lloyd continue to make up the air bills— A. He did.

Examiner Walsh: Just a minute. Don't answer until he finishes his questions, Mr. Reynolds.

Q. (By Mr. Stowell): The air bills and the manifests? A. He did.

Q. Did you ever see Mr. Barulich call anyone on the telephone? A. Yes.

Q. Can you recall whom he might have called?

A. No, no one in particular. I know that he talked to Mr. Bonaccorsi, and Mr. Zappettini.

(Testimony of Clyde E. Reynolds.)

Q. Can you recall the nature of any of the conversations he may have had on the telephone?

A. They were in regard to flower shipments.

Q. Did he ask anyone to ship over Bay Area on the telephone?

A. I can't rightly answer that, because that is naturally what the conversations were all about, Bay Area, when he was talking to these different customers. They were already members at the time, most of them.

Q. Do you personally know whether Mr. Barulich called on any flower growers? [124]

A. Yes, I do know that he did.

Q. Can you tell me whom he called upon, if you know.

A. Yes, he called on Mr. Zappettini, Mr. Bonaccorsi, Mrs. Decia, and numerous others.

Q. About when did you terminate your arrangements with the Bay Area group?

A. I believe you have the records. I couldn't state. Possibly July of 1950, I believe, as near as I can remember.

Q. August 24, 1950, does that sound reasonable?

A. No, it was before then, because Mr. Barulich had taken over approximately a month to sixty days after my agreement with the shippers to discontinue as their agent.

I hauled for Barulich at the time—for the Association, rather. I had no exact date.

Q. Is it true that you paid Mr. Barulich only

(Testimony of Clyde E. Reynolds.)

five cents per box when the box was deposited at the airport by the shipper? A. That is right.

Q. After Mr. Lloyd terminated his employment in connection with this particular operation, can you tell us what Mr. Barulich's duties were? Again, can you tell us what your observation of his duties was?

A. Yes. When Mr. Lloyd left I left at the same time. Lloyd and I left at the same time, and Mr. Barulich took [125] over.

Q. Of your personal knowledge do you know if the Association paid anyone any salary?

A. Not to my knowledge.

Mr. Gaudio: I submit that calls for a conclusion, Mr. Examiner, unless they paid Mr. Reynolds.

Mr. Stowell: Well, he doesn't know.

Examiner Walsh: The answer is no.

Q. (By Mr. Stowell): Did you receive any compensation to act as agent of Bay Area?

A. No.

Q. Did anyone else own office equipment at the operations office besides yourself and Aviation Activities, Inc? A. No.

Mr. Gaudio: During what period?

Mr. Stowell: During the period of your operation.

Examiner Walsh: I think we will have to assume it was during the period that Mr. Reynolds was connected with the Association.

Q. (By Mr. Stowell): Did you pay any of the legal expenses incurred in the incorporation of Bay Area?

(Testimony of Clyde E. Reynolds.)

A. Only for my own protection and information—yes, I did, too, because Mr. Walter Truce, who was our attorney, [126] I think he incorporated the papers, and I either paid all of it or half, I don't recall offhand.

Q. But it is your testimony that you paid at least a substantial portion of the legal expenses and billing submitted by attorneys for the incorporation of Bay Area? A. At first, yes.

Q. When a shipper called your office and asked you to pick up boxes did you or your assistants or people working under your supervision check to see whether the person making the request was a member of the Bay Area group?

A. Yes, that was the understanding, that nobody could ship that was not a member, and so therefore the lady at the office was informed not to haul any boxes for anybody that was not a member.

Q. Did she have a membership roster?

A. She did have. To my knowledge there was nobody shipped that was not a member.

Q. Who was the lady that you mentioned?

A. Mrs. Ann Serel.

Q. Do you know from whom she received this membership roster? A. Myself.

Q. Did you make up the roster, or did you in turn receive it from someone else?

A. Partially. I believe they were printed at California Floral on a mimeograph machine there, which was [127] drawn up by the members of the Board, and I and Mr. Decia went out and got the signatures for those.

(Testimony of Clyde E. Reynolds.)

Q. In other words, did you use the roster of names of the people who signed that letter which I showed you earlier in the examination?

A. I believe that is the original one. Later we had another one.

Q. When you say "we," whom do you mean?

A. Well, acting as an agent I say "we," because at that time I was the contact man. I saw everybody that didn't show up at a meeting, all the growers and shippers, and went around and contacted them. And when I say "we," I mean the Bay Area Incorporation.

Q. This particular membership roster, who decided when a name was to be added over and above the original names who signed that letter?

Mr. Gaudio: Mr. Examiner, I object to the question. It calls for a conclusion.

Mr. Stowell: Mr. Examiner, he maintains that he kept the roster, and he used the word "we," and I think I am free to——

Mr. Gaudio: You are referring now to the basis for membership applications, the passing on membership applications, and I might point out, Mr. Examiner, I don't mean to inject my views on procedure here, but the articles of incorporation [128] as to this group are going to be very pertinent in that respect, and it would call for his conclusion unless he were an officer of the group.

Examiner Walsh: The original members and the requirements for membership by other persons not already members?

(Testimony of Clyde E. Reynolds.)

Mr. Gaudio: Yes.

Mr. Stowell: All that is pertinent, Mr. Examiner, but if he testifies that he maintained the roster, perhaps the practice deviated from the articles.

I am now trying to determine what actually membership consisted of.

Q. (By Mr. Stowell): Let us begin this line of inquiry over again.

The membership roster which you used to determine whether shipments should be accepted by you consisted at the outset of the signatures to that April 4 letter; is that correct?

A. If I remember right, that April 4 letter, we had several more added at a later date, but that first one was just six or eight, I believe.

Q. Now, when others were added——

Mr. Gaudio: Just a moment, Mr. Examiner.

Mr. Stowell: He testified that others were added, Mr. Examiner.

Examiner Walsh: One at a time. Mr. Gaudio, do you have an [129] objection?

Mr. Gaudio: Yes. I have an objection on the ground that any addition of membership to Bay Area, Inc., the Association, is on the basis of applications, and the requirements thereunder. The question calls for the conclusion of this witness, without a proper foundation laid.

Mr. Stowell: Mr. Examiner, it is a proper line of inquiry to ask him if he has this membership

(Testimony of Clyde E. Reynolds.)

roster, if he maintained it, where he got the information to add names, whether he used this roster as a basis for accepting shipments. I am not asking him whether in fact those people became members according to the prescribed ritual. I am asking him whether he accepted shipments on that basis, how that basis may have changed, from where he got the information to change the practice. The practice might have deviated from the prescribed rules.

Examiner Walsh: I will allow the witness to answer, but please be careful and lay proper foundations as you go along, because some of the answers are confusing.

Q. (By Mr. Stowell): Let us begin over again.

You had a record which you used as a basis to determine whether shipments should be accepted; is that correct? A. That is right.

Q. How was this record made up? [130]

A. It was a list of names.

Q. From whom did you get the list of names?

A. From the secretary of the Association.

Q. Did you accept the names which she gave you automatically for your record? A. Yes.

Q. And as names were added they were secured from the secretary of the association; is that correct? A. Yes.

Q. Did you ever refuse to accept any shipments?

A. Not from a member.

Q. Just answer my question.

(Testimony of Clyde E. Reynolds.)

A. Well, there are two questions there.

Q. Did you ever refuse to accept any shipments at all? A. No.

Q. In other words, any person who called you to pick up shipments you proceeded to pick up those particular shipments for Bay Area; is that correct?

A. That is wrong.

Mr. Gaudio: Objection, Mr. Examiner.

Examiner Walsh: I am going to sustain that objection, unless there is a proper showing here that shipments were picked up by specified individuals. We cant' have testimony coming into the record in such an abstract manner. I think [131] that if this witness is going to testify as to whether he received shipments from non-members of the Association we should have some proof as to what shipments were received and have an identification of the persons or firms that these shipments were received from.

To that extent I will sustain the objection, unless it can be shown in the way I have already suggested.

Q. (By Mr. Stowell): Can you recall whether shipments were accepted from any non-members?

Mr. Gaudio: By Reynolds Brothers Transfer Company?

Mr. Stowell: By Reynolds Brothers Transfer Company. A. Yes.

Q. (By Mr. Stowell): Who?

A. Now, I will say it the way I want to.

Mr. Gaudio: Just a moment. You are going to

(Testimony of Clyde E. Reynolds.)

say it, if the Examiner will excuse me saying so, in answer to the questions asked, Mr. Reynolds. Otherwise, I am going to object to any voluntary statements by the witness.

Examiner Walsh: Any statement that we should have on the record is with respect to certain specified shipments that were received from non-members, and in the absence of any such showing as that, testimony to the effect that shipments were received from non-members without anything else, is [132] meaningless. That is my ruling.

Q. (By Mr. Stowell): Can you tell me the names of persons who were non-members who shipped with Reynolds Brothers over the Bay Area service? A. I have none, no.

Q. You don't know of any? A. No.

Q. Do you know if V. Pierce ever shipped via Bay Area?

A. Not to my knowledge. V. Pierce, if I recall him right, is an employee of L. Enoch. To my knowledge he is not a member of the Association.

Q. Did D. Brunetti ever ship via Bay Area?

Mr. Gaudio: All of these questions are during his term of service?

Mr. Stowell: Obviously.

A. To my knowledge, no.

Examiner Walsh: It is quite obvious that he would have no knowledge of the workings of the Association after he severed his connection, so we must proceed on that assumption.

(Testimony of Clyde E. Reynolds.)

Q. (By Mr. Stowell): I show you a list called Consolidated Shippers and Growers, Inc., Flower Manifest List, and ask you to examine it, [133] please.

A. To my knowledge they were all members.

Mr. Stowell: I am sorry. I haven't asked you a question yet.

Mr. Gaudio: Well, he is talking.

Examiner Walsh: Strike that a p p a r e n t response.

Q. (By Mr. Stowell): Does this document reflect the purchase of manifests during the period when you functioned in connection with Bay Area?

A. It does.

Mr. Stowell: Mr. Examiner, I move that this document be marked for identification as EA-73, Mr. Examiner.

Do you intend, Mr. Examiner, to follow the procedure of offering documents into evidence at the close of direct, or the close of direct and cross? What procedure do you desire followed for offering the exhibits into evidence?

Examiner Walsh: I have no particular choice. Do you have any suggestion, Mr. Gaudio?

Mr. Gaudio: Of course it is his evidence. Any time he wants to offer it in evidence I can certainly object and have the legal objections appear at that time. But certainly before the witness leaves the stand.

Mr. Stowell: At this time, Mr. Examiner, I move

(Testimony of Clyde E. Reynolds.)

that Enforcement Attorney's Exhibits 1 to 73, inclusive, be admitted into evidence, which have been previously marked and identified. [134]

Examiner Walsh: Any objection?

Mr. Gaudio: No objection, Mr. Examiner.

Examiner Walsh: Enforcement Attorney's Exhibits 1 through 73 are received in evidence.

(The documents marked as Enforcement Attorney's Exhibits Nos. 1 through 73, inclusive, were received in evidence.)

Mr. Stowell: I have no further questions of this witness.

Examiner Walsh: We will recess at this time, gentlemen, and we will reconvene at 2:15.

(Whereupon, at 1:10 p.m., a recess was taken until 2:15 p.m. of the same day.) [135]

Afternoon Session, 2:15 P.M.

Examiner Walsh: Come to order, gentlemen.

You may cross-examine, Mr. Gaudio.

Whereupon,

CLYDE E. REYNOLDS

resumed the stand and testified further as follows:

Cross-Examination

By Mr. Gaudio:

Q. Mr. Reynolds, I believe you testified that you were one of the instigators, to use your words, in

(Testimony of Clyde E. Reynolds.)

the organization of the group which is now known as Bay Area; is that correct?

A. That is right.

Q. Have you any records that will tell us at this time the dates of the members that you personally procured on that letter of June 14, I believe it was?

Mr. Stowell: April 14.

Mr. Gaudio: April 14, 1949.

A. I believe I have the records in the office.

Q. You have them? A. I am quite sure.

Q. The original documents which were signed by these members?

A. I am not positive. I believe I have.

Q. Will you produce them at this hearing at a later date? [136] A. Yes.

Mr. Gaudio: For the record may I ask that the witness be instructed accordingly.

Examiner Walsh: Let the record show that such documents will be submitted by Mr. Reynolds. I will suggest that you contact Mr. Stowell as to the manner in which he wants them handled.

Do you want them submitted before we conclude the hearing?

Mr. Gaudio: Before we conclude the hearing, yes.

Q. (By Mr. Gaudio): At the meeting where you say you first met the organizers of Bay Area, I believe you named Mr. Zappettini, Mr. Bonaccorsi and Mr. Enoch. Mr. Barulich was not present at that meeting? A. He was not.

(Testimony of Clyde E. Reynolds.)

Q. To your knowledge, at any rate, Mr. Barulich did not enter this picture until September of 1949, I believe you said; is that correct?

A. Approximately.

Q. At that time was any discussion had between these people regarding the arrangements and the basis on which you would undertake to handle the trucking end of the business?

A. I don't recall. Only that he was brought in as traffic manager, and the agreement was made to pay him so much [137] per box.

Q. Insofar as you were concerned what was the basis of your handling the pickup and hauling to the air port?

A. As far as I was concerned, I got the 40 cents for a box that I picked up and actually I got 50 cents, but 10 cents of that was to go toward Mr. Barulich's salary.

Q. When you refer to Mr. Barulich you are referring to the consolidation work in the office? Is that what you are referring to?

A. Referring to him as the traffic manager.

Q. As the traffic manager?

A. That is right.

Q. Did you ever see or read the contract of employment, if there was one, between Mr. Barulich as traffic manager and the Association?

A. I could answer that yes and no. I probably did, but I don't recall.

Q. You don't recall its specific provisions or

(Testimony of Clyde E. Reynolds.)

what duties were assigned to him as traffic manager?

A. Just traffic manager is all I recall.

Q. And for acting as traffic manager you agreed to pay him 10 cents out of your fifty cents?

A. That is right.

Q. That arrangement continued until about when, if you recall exactly? [138]

A. I believe June of 1949, if I am not mistaken. It might have been '50.

Q. Let me put it this way: Was it during the time that Mr. Lee, who testified earlier, shipped?

A. Yes, I am quite sure.

Q. And then sometime soon after that, I believe you said you terminated your arrangements with Bay Area?

A. That is right.

Q. Wasn't that about the time, if you know, when the service offered by the carriers previously referred to as collect distribution was discontinued?

A. Perhaps after that. I don't recall.

Q. Shortly after that, was it not?

A. I don't recall. It wasn't at that time, to my knowledge.

Q. At least for a substantial portion of the period when you handled the trucking collect distribution was in effect, was it not?

A. Yes and no.

Q. Well, will you explain your answer.

A. Because the tariff said collector distribution. It didn't say either or both.

Q. And eventually the service was discontinued

(Testimony of Clyde E. Reynolds.)

pursuant to some requirement or rule of the Civil Aeronautics Board, was it not? [139]

A. I remember that part of the lines did and part of them didn't.

Q. During this period when collected distribution was indulged in a good many of these services or the arrangements for the handling of consolidated shipments were in fact handled by the airlines direct; is that right? A. Partly.

Q. Mr. Reynolds, would you say that the discontinuance of the collect distribution feature of the direct carrier service was a contributing factor in the calling in of Mr. Barulich to act as traffic manager?

A. No.

Q. You would not? A. No.

Q. After the collect distribution was discontinued were the services formerly conducted by the air line performed by you, until Mr. Barulich came in? A. Yes, and afterwards also.

Q. I believe you testified earlier that Waldier & Truce was your attorney? A. That is right.

Q. I show you what appears to be a three page document prepared on legal paper from the law offices of Waldier & Truce, Attorney's at Law, and ask if you are familiar with that document? [140]

A. Yes, I recall it.

Q. This notice, let's call it, was issued by your attorneys, addressed to Consolidated Flower Ship-

(Testimony of Clyde E. Reynolds.)

ments, Inc., Bay Area, pursuant to your instructions? A. That is right.

Mr. Gaudio: May I ask that this be identified as Respondent's Exhibit first in order at this time.

Examiner Walsh: Addressed to Consolidated Flower Shipments, Inc., Bay Area. I do not see a date.

Mr. Gaudio: It doesn't appear to be dated.

Examiner Walsh: The document is signed by Clyde E. Reynolds, in behalf of Reynolds Transfer & Storage Company. The document appears to be undated.

It will be marked for identification as Consolidated Flower Shipments' Exhibit No. 1. We will use the symbols "CF." Do you have a symbol that you have used?

Mr. Gaudio: Inasmuch as we have always referred to it as Bay Area, we might call it "BA."

Examiner Walsh: We will make it BA-1. The above described document will be marked for identification as Exhibit BA No. 1.

(The document above referred to was marked for identification as Bay Area's Exhibit No. 1.)

Q. (By Mr. Gaudio): Mr. Reynolds, this notice, apart from notifying [141] Bay Area of certain things, has two alternative provisions which you submitted to them at that time as to the method of handling; is that right? A. That is right.

Q. The first one, which appears at page 2 under paragraph (a) states as follows:

(Testimony of Clyde E. Reynolds.)

“We offer to contract with your members for a period of not less than one year, providing for exclusive use of our facilities to transport your flowers to San Francisco Airport at a flat rate of 35 cents per 5-foot box or smaller, weighing approximately 40 pounds or less. Our responsibility would end upon delivering the flowers to a designated point at the airport. Under those circumstances are we to have anything to do with the preparing or assembling of your flowers for the airfreight shipment at the airport?”

And the other alternative under caption (b), page 2, reads as follows:

“We offer to pick up and deliver to the San Francisco Airport flower shipments, and prepare and assemble such flower shipments at the airport for air transportation at the flat rate of 50 cents per 5-foot box or smaller, weighing approximately 40 pounds or less. Where the shipment is deposited at the assembly area at the airport by the shipper the rate would be 25 cents per 5-foot box or smaller, weighing approximately 40 pounds or less. In [142] such case we are to have complete control of the assembling facilities at the airport. This agreement to be by signed contract for a period of not less than one year.”

Examiner Walsh: Is there a date given down below? Didn't I notice a date in the last paragraph?

Mr. Gaudio: There doesn't appear to be a date. There isn't a date on this document, is there?

(Testimony of Clyde E. Reynolds.)

The Witness: I don't recall.

Q. (By Mr. Gaudio): Do you recall about when you signed this document which Mr. Truce prepared for you?

A. Perhaps he would have a date on that in his files.

Q. You don't recall approximately when it was?

A. I recall approximately thirty days before the termination of my agreement with the shippers.

Q. And when did you discontinue handling the Bay Area shipments?

A. As an agent, approximately June.

Q. So would you say that approximately May of 1950 was when this notice was delivered or signed?

A. May or June, yes.

Q. That second alternative under paragraph (b) was the method of handling that had been in effect up to the time you signed this notice, where you handled all of the arrangements; was it not? [143]

A. Yes, and no.

Examiner Walsh: I wonder if you could be a little more positive.

The Witness: Yes, because at that time, previous to this Mr. Barulich had come in as traffic manager and had assisted in prorating the charges, but Mr. Lloyd was still working at the office.

Q. (By Mr. Gaudio): What I meant was—maybe you didn't understand my question—whereas alternative (a) you would still be a trucker—

A. At the lower rate, and Mr. Barulich would take full charge of the assembly and distribution.

(Testimony of Clyde E. Reynolds.)

Q. And at the higher rate under paragraph (b) you would handle a shipment right on through to consignment?

A. As before Mr. Barulich came in.

Q. And wasn't that the same basis of compensation that had been in effect up to that time—50 cents a box?

A. Yes, but there was also ten cents of that 50 cents that was taken out of that for Mr. Barulich's salary.

Q. The ten cents was going to come out of paragraph (b), was it not—out of the 50 cents?

A. Paragraph (a) was when Mr. Barulich was handling it, I would merely do the trucking to the airport, and paragraph (b) Mr. Barulich would not enter the picture whatsoever, [144] I would have complete control as before Mr. Barulich came in.

Q. In other words, the ten cents which you might have paid Mr. Barulich under (a) you would thereafter retain for yourself under paragraph (b)?

Mr. Stowell: Mr. Examiner, I think there is some confusion here. Mr. Reynolds testified that the 35 cents was without reference to any ten-cent payment to Mr. Barulich. It is my understanding that 35 cents was to go exclusively to Mr. Reynolds.

Examiner Walsh: That was my understanding, but it does not conflict with the present testimony.

Mr. Stowell: I was getting the impression from the assumptions that you are making that ten cents out of the 35 cents would go to Mr. Barulich.

(Testimony of Clyde E. Reynolds.)

Mr. Gaudio: I wasn't trying to make any impression. I was just trying to get specifically what the basis was before he terminated his arrangement.

Examiner Walsh: You are trying to establish now that if paragraph (b) were accepted then Mr. Barulich would no longer draw ten cents from any of the services. In other words, the services would be under the exclusive control thereafter of Mr. Reynolds.

Mr. Gaudio: That would seem to be the intention in paragraph (b). [145]

Is that your understanding of it, Mr. Reynolds?

The Witness: Yes.

Q. (By Mr. Gaudio): In other words, if (b) were adopted you would terminate your arrangement with Mr. Barulich on the ten cents a box basis?

A. That is right.

Q. But if (a) were adopted then you would continue to pay him the ten cents?

A. No, if it was adopted the shippers would pay him.

Mr. Stowell: That is what I wanted to point out.

Q. (By Mr. Gaudio): What was the single fact as far as Reynolds Brothers was concerned that prompted giving this notice?

A. I felt that Mr. Barulich wasn't doing any good as far as I was concerned as a trucker, and I continued the same service as before with the deduction of ten cents a box for my efforts. That was the reason that I ended the contract.

(Testimony of Clyde E. Reynolds.)

Q. Up until the collect distribution was terminated by the air lines you weren't doing that, were you, Mr. Reynolds? A. Partly.

Q. I mean for Bay Area?

A. Yes, even after Mr. Barulich came in until I left the distribution was still in effect. [146]

Q. When did that end?

A. I wouldn't know. I got out of it before that termination.

Examiner Walsh: I wonder if we might have a little information on the term "collect distribution."

Mr. Gaudio: I don't have that date fixed in my mind at this point.

Examiner Walsh: I mean definition of the term "collect distribution." What is the connotation of that term?

Mr. Gaudio: I think perhaps Mr. Stowell could better answer, Mr. Examiner.

Mr. Stowell: First let me state what distribution is. Distribution is the break bulk and delivery by an air carrier of a consolidated shipment, or in fact any shipment which is susceptible of having several parts to it. Under the present regulations of the Board those may be accepted by air carriers only provided they are prepaid.

Presumably, if I may say this without knowing definitely, the air carriers may have accepted shipments for distribution on a collect basis.

Examiner Walsh: Collecting at the end?

Mr. Stowell: The airfreight charges and the pro-

(Testimony of Clyde E. Reynolds.)

ration thereof would be collected from the consignees.

As I pointed out, that is illegal, and consolidated shipments [147] may only move for distribution provided the consignor, who must be one consignor, prepays, or pays for the shipment in advance.

Examiner Walsh: That is where the term "advance" comes from?

Mr. Stowell: You mean advance charge?

Examiner Walsh: Advance charge.

Mr. Stowell: That is another term, which I would leave for definition by Mr. Barulich.

Mr. Gaudio: The point of my examination was that under the collect distribution that was previously in effect air carriers performed a good deal of the paper consolidation work, because of the collection that they would effect on the other end. When that practice was precluded, except under certain conditions, the service was no longer available.

That is the basis for my interrogation of Mr. Reynolds. And the duty or the responsibility then devolved upon Bay Area personnel to assume the duties and the burdens of actually consolidating the shipments in their facilities at the airport.

Q. (By Mr. Gaudio): I believe you gave your address as Redwood City, Mr. Reynolds?

A. That is right. [148]

Q. The facilities which were taken over at the airport were taken over for the account of Bay Area, were they not?

A. That I wouldn't know. Well, yes.

(Testimony of Clyde E. Reynolds.)

Q. Aviation Activities, as agent, I believe you testified, acted on behalf of Bay Area and subscribed for Bay Area at the airport? A. Yes.

Q. Was any part of the rental, at least while you were in operation there, assessed to Bay Area accounts? A. Absolutely none.

Q. It was all paid out of your personal account?

A. My own.

Q. These manifests that you purchased, as appears on Exhibit EA-73, showing the names of various members, that was merely a roster for your use in prorating the cost of the purchase of the manifest, was it not?

A. That simplified it, made everything uniform. That was for shippers as well as for myself.

Q. This EA-73, entitled "Consolidated Flower Shippers and Growers, Inc., Flower Manifest List," did you compile this list yourself in your office?

A. Well, I know it, but whether or not we compiled it, I feel sure that we did, though, for distributing them through the members. [149]

Q. And prorating the cost of the manifest to the members? A. That is right.

Q. Where did you get the list of the names to use on this roster?

A. From the membership.

Q. From the secretary?

A. Originally it was from the secretary. But we had the names of the membership right there, that we called the shippers with. Presumably they are the ones that they went to.

(Testimony of Clyde E. Reynolds.)

Q. In other words, if I remember your testimony, the secretary, Mrs. Decia, I believe you said, gave you the membership roster, and then you transcribed the names from that roster to this document for the purpose of prorating the cost of the manifests among the members?

A. That is right.

Q. When you received the money from the air carrier was that pursuant to a bill which you sent them, or did they just send it to you from some ledger account of theirs?

A. They were billed monthly.

Q. You billed them monthly?

A. Bi-monthly or monthly.

Q. And in whose name was that sent to the air lines? A. Reynolds Brothers. [150]

Q. You did not use the Bay Area account?

A. I wouldn't say yes or no, but I know that it was received in Reynolds Brothers.

Q. Have you any record in your possession that would disclose the exact status of the billing and transmitting of funds from the air lines to you for that account?

A. I think so. I wouldn't state for sure.

Q. Would you produce those letters at a later hearing, statements from you to the air lines indicating the amounts that should be due or paid to you?

A. I feel quite sure I have those records, and I will produce them.

(Testimony of Clyde E. Reynolds.)

Examiner Walsh: Would that represent a balance, or what charges would that statement represent?

The Witness: The flowers that were hauled. That would be for the month's shipping.

Examiner Walsh: That would be under your collect distribution system?

The Witness: No, it would be my trucking. I charged so much a box to haul them to the airport, and that was added to the bill, and then the air lines were billed for it.

Q. (By Mr. Gaudio): Is that the charge that appears on these invoices of yours as an advance charge? [151]

A. Reynolds Brothers advance charge.

Q. Do you have a similar record—I believe I have asked already—with respect to your cancelled checks or any memoranda as to the basis on which the premises were leased?

A. Yes, I have cancelled checks. You asked me that.

Q. Are you familiar with Mr. Lee who previously testified? A. I have met him, yes.

Q. Were you in the hearing room when he testified? A. I was.

Q. Will you state just how it was that you first came to know Mr. Lee, Mr. Reynolds, under what circumstances?

A. I had hauled flowers for Mr. Lee previous to this, sometime ago. But after the consolidation we were talking about it, and Mr. Decia and I called

(Testimony of Clyde E. Reynolds.)

in his office and tried to get him to go as a member of the Association, and I had thought that he had signed first, but I couldn't say that he did.

Q. In other words, when you and Mrs. Decia called at his office it was your impression that he was one of the original subscribers to the Bay Area Association? A. Not necessarily so.

Q. Or had been admitted to membership?

A. The understanding was it was for the purpose of [152] incorporating, and I thought he had signed as one of the original members at that time, because I know there was talk of his being on the Board of Directors. Now, as to whether he signed, I wouldn't be able to state for sure.

Q. Would it be a true statement to say that in so far as your handling of Lee's shipments were concerned, it was on the assumption that he was a member? A. Yes.

Q. When did you find out that in fact he was not, if ever? A. I don't believe I ever did.

Q. At least until this morning you didn't know?

A. That is right.

Q. That ten cents a box that you undertook to pay to Mr. Barulich, was that ever assessed to Bay Area's account? A. Never.

Q. At least while you were operating?

A. That is right.

Q. I would like to ask you again, Mr. Reynolds—I think it is pertinent here—could you give us a

(Testimony of Clyde E. Reynolds.)

specific date of when you stopped operating as trucker for Bay Area?

A. Mr. Barulich would have that. I do not have it.

Q. I could possibly get it, Mr. Reynolds, but I am just trying to refresh your recollection as to when it was. [153]

A. I can give it to you within two months one way or the other, but that wouldn't be answering your question.

Q. Give us an approximation.

A. I believe it was June of 1950.

Q. Do you recall receiving a telephone call from Mr. Barulich at about that time as to why trucks were not operating that day?

A. No, I did not receive such a call.

Q. Did you ever formally give notice of termination of your arrangements with Bay Area?

A. I did, by letter.

Q. In order that we understand one another, I am referring to your specific contract as agent, trucker and general handler for Bay Area's account, when I ask you for the termination of your arrangements.

Is your testimony the same that it would be about June?

A. To my knowledge, I would say yes.

Q. I show you a letter over what appears to be your signature, dated May 12, and ask you if that was your notice of termination to which you have just testified?

A. Yes.

(Testimony of Clyde E. Reynolds.)

Mr. Gaudio: I will offer this as Bay Area's Exhibit next in order for identification.

Examiner Walsh: The letter to Consolidated Flower Shipments, dated May 12, 1950, and signed by Mr. Clyde E. [154] Reynolds, will be identified as Bay Area's Exhibit No. 2.

(The document above referred to was marked for identification as Bay Area's Exhibit No. 2.)

Q. (By Mr. Gaudio): This letter of May 12 concludes by saying:

"We regret that this letter must be considered the 30-day notice of termination required under the agreement dated June 7, 1949."

Would I take it from that that about May 12 you considered your arrangements terminated?

A. That is my understanding, yes.

Q. As a matter of fact, you did nonetheless continue to haul Bay Area shipments after that time when Mr. Barulich was constrained to take over, is that not right?

A. For Mr. Barulich, not Bay Area.

Q. You did haul some shipments for a period of time for Mr. Barulich?

A. That is right.

Q. At that time did you know of his assignment or duty as executive secretary of Bay Area?

A. I did.

Q. How long a time did that operation continue for his account?

A. Approximately six weeks, I would say.

(Testimony of Clyde E. Reynolds.)

Q. Did you notify him or Bay Area of your intention to [155] discontinue to act as underlying trucker for their account?

A. He had no agreement other than verbal, and neither did I have. And that is the way it was entered, verbally.

Q. It was entered verbally by a telephone call from Mr. Barulich asking where the trucks were, was it not? A. No, it was not.

Q. Did you notify him before that that you were discontinuing?

A. I told him two weeks before that.

Q. I mean, the day you suddenly decided to discontinue, did you notify him before your actual discontinuance that you were going to cease?

A. I don't recall.

Q. As a matter of fact, isn't it true, Mr. Reynolds, that the fact of your discontinuance was a consequence of your selling the trucks to Airborne?

A. Not trucks—truck.

Q. Truck. Well, I should say the only truck which was available for Bay Area service at that time. A. No.

Q. What other truck was available?

A. I had four other trucks.

Q. But were you using five trucks in the Bay Area service at the time?

A. Not at the time, but if necessary they were there. [156] I used three or four at different times.

Q. And did you sell all four or five, whatever it was, to Airborne? A. I did not.

(Testimony of Clyde E. Reynolds.)

Q. What kind of a truck were you using for Bay Area's account?

A. A regular ton and a half panel truck.

Q. Was that the only panel truck you had at that time? A. Of that particular type.

Q. The kind that was used in this service; is that right? A. Yes.

Q. And that was the one that you sold to Airborne? A. That is right.

Q. Did you commence trucking operations for Airborne's account at the same time? A. No.

Q. You just sold them a truck?

A. That is right.

Q. When was it that your sale took place to Airborne? A. Approximately August 24.

Q. August 24? A. Approximately.

Examiner Walsh: I assume that is 1950, [157] is it?

The Witness: Yes.

Q. (By Mr. Gaudio): As a man in charge of the physical operation prior to Mr. Barulich's entry into the picture, did you ever have occasion to call upon other transfer or trucking companies or agencies to handle Bay Area flower shipments?

A. By letter.

Q. To whom?

A. Oh, several different ones.

Q. In the Peninsula area?

A. Not here. Not to my knowledge, no, sir.

(Testimony of Clyde E. Reynolds.)

Q. You never made any such requests?

A. I believe when we first started I did, one or two trips only. When it was first started. That was before Mr. Barulich came in.

Q. What companies were they, Mr. Reynolds?

A. He has one truck. It is Redwood City. I don't recall its name.

Q. What kind of equipment did he have?

A. One semi-truck.

Q. Panel type? I mean to say, was it the box type? A. Enclosed.

Q. Was that for some emergency?

A. That particular case was.

Q. Other than that, however, you made no practice of [158] farming out your trucking operations to local haulers? A. I did not.

Q. Was there any reason for that?

A. Well, I had equipment enough to handle it. I didn't have to.

Q. How many employees did you have actually conducting the truck phase of the business?

A. On flowers only?

Q. On flowers only. A. From one to four.

Q. Drivers? A. Drivers.

Q. Handlers?

A. Well, the driver was the handler. Other than Mr. Lloyd at the field.

Q. What were the normal working hours of the trucker, that is, the man who actually did the driving?

A. Approximately six to seven hours per day.

(Testimony of Clyde E. Reynolds.)

Q. Which particular hours of the day, do you recall?

A. From 1:00 o'clock until we got through in the evening.

Q. From 1:00 o'clock in the afternoon until evening?

A. Yes.

Q. Your drivers wouldn't be out in the morning?

A. No. [159]

Q. Was there any reason for that?

A. Well, the flowers weren't ready to go at that time.

Q. When did you know that the flowers would be ready to go?

A. Of a morning we would call by phone and find out who was shipping what to where, and we would book space on the planes.

Q. In other words, you made all your pickup arrangements in the morning, and then actually went out and did the physical hauling in the afternoon?

A. That is right.

Q. Did you establish that practice because of any deadlines with the air lines?

A. Yes and no. But we had a deadline with the American at that time, 6:00 o'clock. And we had to be at the field by 6:00 o'clock, otherwise they wouldn't take them.

Q. In other words, this afternoon pickup schedule was based in part on the air line schedules; is that right?

A. In part on that and in part on packing the flowers.

(Testimony of Clyde E. Reynolds.)

Q. Pardon?

A. In part on packing the flowers.

Q. Who did the packing?

A. The shippers.

Q. Do you mean that packing as such in effect controlled the departure time, that is, the pickup time? [160]

A. That is right. They waited of a morning to get their orders in, so therefore we couldn't pick them up until afternoon in most cases.

Q. What is your present occupation, Mr. Reynolds?

A. Reynolds Brothers Transfer & Storage, Household Goods and General Commodities.

Q. You are still hauling general commodities?

A. Yes, contract.

Q. Pardon? A. Contract.

Q. Do you have any common carrier rights?

A. Radial Highway Contract Carrier.

Q. Did you transfer those rights also to Airborne with your equipment?

A. Absolutely not.

Q. You made no transfers of any operating authority to Airborne? A. No.

Q. None whatever?

A. Other than I am not hauling flowers.

Q. Did you have any special operating authority for the hauling of flowers?

A. No, not any more than anybody else.

Q. Maybe I didn't ask the question in the proper form, Mr. Reynolds. [161]

(Testimony of Clyde E. Reynolds.)

You still have operating authorities. Have you sold or assigned or transferred any of your operating accounts to Airborne? A. No.

Q. For hard freight?

A. At one time I quit hauling hard freight, and Mr. McPherson hauled for awhile, while I was out. Then I started back in, and part of the accounts I got back, and part of them Mr. McPherson still has.

Q. In other words, during your absence that took place? A. That is right.

Q. And on your return some of the accounts you resumed and others he retained?

A. That is right.

Q. By the way, Mr. Reynolds, do you have any financial interest in Airborne Freight Flower Traffic? A. I am afraid not.

Q. You have none? A. I have none.

Q. Was this truck that you sold to Airborne the truck used by you in the pickup or hauling of hard freight? A. And flowers.

Q. What was the tonnage capacity rating on that? A. Ton and a half. [162]

Q. Did you ever observe the same of Lee Brothers, the witness who previously testified, on the membership roster of Bay Area at any time?

A. I believe I answered that before. I thought I had, but I wasn't positive.

Q. At least you wouldn't be able to give us a more specific answer until you have checked your records? A. That is right.

(Testimony of Clyde E. Reynolds.)

Mr. Gaudio: I think that is all I have of this witness at this time, Mr. Examiner. Subject to the previous request, I might like to call him as a direct witness. And I might say for the record that I have had him subpoenaed and that he made himself available on presentation of my case in chief.

Examiner Walsh: Very well.

Mr. Wolf.

Q. (By Mr. Wolf): Mr. Reynolds, will you go back in your thinking to the time when Bay Area was first formed as an organization of some type. I think you testified earlier this morning that you and Mrs. Decia called on various flower shippers? Is that right?

A. Mr. Decia and myself, yes.

Q. Was it your idea first to form an organization for the shipment of flowers? [163]

A. Well, yes and no.

Q. Could you answer both sides of that question, please.

A. My thought was in the trucking, naturally, and I thought that the shippers could save money, so it was both ways.

Q. That is, the advantages would work both ways? A. That is right.

Q. Who first had the idea about Consolidated Flower Shipments?

A. I believe I started the idea sometime ago.

Q. Did you propose to some of the leading flower growers in the Bay Area locality that they form an organization?

(Testimony of Clyde E. Reynolds.)

A. I met with a bunch of them.

Q. With whom did you meet?

A. Mr. and Mrs. Decia, Mr. Zappettini, Mr. Bonaccorsi, and Mr. Enoch.

Q. Who else?

A. Various shippers. I don't recall them offhand, all of them.

Q. How many flower shippers were there at that time in the Bay Area?

A. I don't recall but it seems to me that it was about 22 that we had signed. [164]

Q. Twenty-two that we had signed? Who was "we"?

A. The Bay Area Association, and myself as agent for them.

Q. Would you say that that was about a third of the entire number of the growers and shippers in the area?

Mr. Gaudio: If he knows.

A. I wouldn't know that.

Q. (By Mr. Wolf): You don't know?

A. No.

Q. You recall, do you not, that when the organization first commenced it started as an unincorporated association? Do you remember that?

A. Yes.

Q. And thereafter it was incorporated, do you remember that?

A. I misunderstood the question.

(Testimony of Clyde E. Reynolds.)

Examiner Walsh: Do you want the question read back?

Mr. Wolf: Yes.

(Question read.)

A. The answer to that is I don't know—a non-profit organization, but it was incorporated, to my knowledge.

Q. It was incorporated, to your knowledge?

A. Yes.

Q. I see. And at that time you say there were about [165] 22 members signed up; is that right?

A. To my knowledge.

Q. Did you solicit those members?

A. Partly.

Q. Who solicited the other part?

A. I think various members contacted each other, as well as Mr. Decia and I going around with this first letter.

Q. When you say various members contacted each other do you mean various members who had signed up contacted those who had not signed up?

A. That is right.

Q. Do you know if all of the flower growers in the area who did outside shipping were contacted?

A. No, I don't know.

Q. About how many did you personally contact?

A. I couldn't give you the exact number.

Q. Do you know how many Mr. Decia contacted?

A. No, I couldn't give you the exact number.

(Testimony of Clyde E. Reynolds.)

Q. Before the organization was incorporated you had contacted some, Mr. Decia had contacted some, and members who had signed up had contacted other members; is that correct?

A. Yes.

Q. And is it fair to state that from time to time during [166] this organization procedure that you met with some of the leading flower growers whose names you have mentioned and discussed those who had signed up and those who had not signed up?

A. There were meetings where all the members would find out if they knew any members that came in. The Board of Directors would do that.

Q. At these meetings, Mr. Reynolds, were discussions had in regard to other members who might come in, or other persons who might come in?

A. I don't recall.

Q. Incidentally, when you were an agent for Bay Area did you ever ship anything for any of their members other than flowers? A. No.

Q. During your direct examination, Mr. Reynolds, you made a statement that was a little hazy to me, at least.

You said that this was about the time when you were looking at that membership list which is Exhibit No. 73, and you said something like this: "I was the contact man, and when they didn't show up at a meeting I called on them."

Do you remember saying something like that?

A. That does sound a little like a gangster. But it was merely—no, I don't recall saying that.

(Testimony of Clyde E. Reynolds.)

Q. Well, you started saying "I was a contact man." [167] That was true, wasn't it?

A. Yes.

Q. What do you mean? Whom did you contact?

A. I meant that I called on different shippers with Mr. Decia before it was incorporated, and afterwards, and was at meetings when different people were there.

Q. After it was incorporated did you call on shippers who were not members?

A. I believe I did.

Q. For what purpose?

A. Just to see if I could be of service to them as a trucker.

Q. Did you call on any flower shippers who were not members of Bay Area for the purpose of asking them to join the organization?

A. I don't believe I did after it was incorporated.

Q. Now, you testified this afternoon when Mr. Gaudio was questioning you that you called on Mr. Lee.

Do you recall that? A. I do.

Q. And when you were first asked you said you called on Mr. Lee to see if he would join Bay Area; is that correct, Mr. Reynolds?

A. That is right, with Mr. Decia at the time.

Q. When was that? [168]

A. That was before the incorporation.

Q. I see. And at that time you knew that Mr. Lee was not a member; is that correct?

(Testimony of Clyde E. Reynolds.)

A. There was no members at that time, no members of Bay Area.

Mr. Gaudio: What was the date, Mr. Reynolds? I can't hear you.

Examiner Walsh: He did not give the date.

The Witness: I don't have it myself.

Examiner Walsh: He stated it was before the Association was incorporated.

Mr. Gaudio: For the record, that would be prior to June 14, 1949.

Q. (By Mr. Wolf): And at that time, as you have stated, Mr. Lee wasn't a member, because there weren't members; is that right?

A. That is right.

Q. And when you took the shipments for Mr. Lee that Mr. Lee has testified about, you didn't know whether he was a member or not?

A. I assumed he was.

Q. Didn't you look at your membership list?

A. Like I say, I looked at the first one. I thought his name was on it. [169]

Q. You thought it was on it? A. Yes.

Q. Was it on it? A. I don't recall.

Q. And after looking at the first one, that means the first membership list? A. Yes.

Q. And after that time you never looked at the list to see if Mr. Lee's name was on it, did you?

A. Not particularly, no. I looked at the list.

Q. As a matter of fact, Mr. Reynolds, you never looked at that list at all, did you? A. I did.

Q. When? A. At all times.

(Testimony of Clyde E. Reynolds.)

Q. Every time a shipper phoned, you looked at the list?

A. It was there by the phone.

Q. Did you look at it? A. Perhaps.

Q. When Mr. Lee phoned to have you pick up his flowers on the several shipments you looked at the list by the phone?

A. There is other help besides myself. I can't do it all. And the girl perhaps takes the orders. I assumed she did. She was told to do so. [170]

Q. You assumed that she looked at the list?

A. That is right.

Q. But you don't know whether she saw Mr. Lee's name on it, do you?

A. I didn't look for her. She was instructed to look, and I wasn't standing there watching her.

Q. Now, Mr. Reynolds, you testified pretty thoroughly about the operations of Bay Area at this end.

What arrangements were made for breaking bulk at delivery points of consolidated shipments?

A. There were agents at the other end.

Q. Who made contact with those agents for the purpose of breaking bulk and distributing?

A. The Bay Area officer wrote letters to them and contacted them.

Q. The Bay Area officer made those arrangements? A. Yes.

Q. Did you make any of them?

A. I wrote some of the letters.

(Testimony of Clyde E. Reynolds.)

Q. I see. But in most of the cities to which deliveries were made the break bulk distributing operations were arranged for by the officers of Bay Area; is that correct? A. To my knowledge.

Mr. Wolf: Thank you, Mr. Reynolds. That is all. [171]

Examiner Walsh: Redirect, Mr. Stowell?

Redirect Examination

By Mr. Stowell:

Q. Mr. Reynolds, do you recall whether you ever accepted shipments for Consolidation via Bay Area for the Floral Service of San Mateo?

A. No, I don't recall of any.

Q. Gregorie? A. I don't recall Gregorie.

Q. Ferrari Brothers?

A. I remember picking up. I don't recall whether they were in a Bay Area shipment or direct.

Q. When you say direct shipment, you mean that you also picked up floral shipments to be sent over air carriers which did not enter into the Bay Area Consolidation? A. That is right.

Q. Did you use Bay Area manifests for those shipments? A. I did not.

Q. How much did you assess as a charge on a direct shipment? A. Fifty cents per box.

Q. The same amount as for a consolidated shipment? A. Trucking was all I did.

May I re-word that? I believe at that time there

(Testimony of Clyde E. Reynolds.)

was 75 cents minimum for a direct shipment, or 50 cents a box [172] thereafter. Now, I might be wrong on that. It was at least 50 cents a box.

Q. But at least if the shipment were two boxes or more it was at the same rate as the Consolidated?

A. The trucking.

Q. Do you recall whether in billing for your advance charges on a direct shipment there was any difference in the manner of billing as compared to billing in respect to advance charges for Consolidated shipments which you picked up?

A. None.

Q. Did you ever pick up any flower shipments for Nurserymen's Exchange?

A. Not to my knowledge.

Q. Was there any restriction in your understanding with the Association that you could not pick up shipments direct from non-members?

A. Absolutely not.

Q. In other words, as far as your understanding with the Association, any shipments which did not enter into a Consolidation you could pick up, any and all flower shipments; is that correct?

A. That is right.

Q. Did you commingle those flower shipments which you picked up from the shippers for direct shipment with [173] the boxes of those shippers intended for Consolidated shipment in the same vehicle?

A. Yes.

Q. Did you pick up from one shipper both

(Testimony of Clyde E. Reynolds.)

direct shipments and shipments intended for consolidation? Did that ever occur?

A. Not to my knowledge.

Q. Might it not have been possible where you did not accumulate enough boxes for a consolidation to a certain point that the same shipper might have had enough boxes to be consolidated, and also have direct shipments to a point where a consolidation might not be warranted?

Mr. Gaudio: Mr. Examiner, I will object on the ground that it calls for a speculative answer, and on the ground that it is irrelevant and immaterial.

Examiner Walsh: I think he is trying to find out what Mr. Reynolds actually did in transporting these shipments.

In other words, it involves the question of commingling of direct shipments with the consolidated shipments and the transporting them from the shipper to the assembly point or point of direct shipment. I think we should have an answer on that, if he knows.

The Witness: That is right.

Examiner Walsh: Is the answer yes, that that had been done? [174]

The Witness: Yes.

Q. (By Mr. Stowell): And when you deposited these boxes with the air carrier for physical transportation it might very well have been that you would deliver to the air carrier boxes involving direct shipments and boxes involving consolidated

(Testimony of Clyde E. Reynolds.)

shipments at about the same time? A. Yes.

Q. Can you recall how you paid the telephone bill, or rather can you recall how the telephone bill was directed, in whose name?

A. Reynolds Brothers. I paid the bills.

Q. Can you recall the telephone exchange at that time? A. No, I cannot.

Q. And you continued to pay the telephone bill in your name until you terminated the arrangement under discussion? A. I did.

Mr. Stowell: I have no further questions.

Examiner Walsh: I would like to ask a question of Mr. Reynolds before we recess.

I just want to try to consolidate my thinking a little bit.

Mr. Reynolds, with respect to this question of advance charges and your billing the air line for what they owed you, [175] do I have the picture correct that when you picked up shipments of flowers to be consolidated that you would transport the flowers to the assembly point and there you would also accomplish the task of consolidating shipments, and you bore the expenses up to that point, and the flowers would be turned over to the air carrier, and the consignee would collect at the other end, remit to the carrier, and then you would bill the air carrier for what it owed you, periodically? Is that correct?

The Witness: That is correct.

Examiner Walsh: Mr. Gaudio?

(Testimony of Clyde E. Reynolds.)

Recross-Examination

By Mr. Gaudio:

Q. Mr. Reynolds, let's clarify this so-called direct shipment basis and consolidations, if you will.

Before you ever had any idea of an association you did handle, as I understand it, the transportation of shipments to the airport strictly on your own; is that correct? A. That is right.

Q. Somewhere along the line you conceived the idea that it might be advantageous if the shippers got together; is that right? A. That is right.

Q. Did you by your arrangements with the Association ever intend to discontinue the private trucking enterprise or [176] operations which had been in effect for some time and devote all your attention to Bay Area? A. No, I did not.

Q. In other words, you would offer a service in the trucking of Bay Area shipments if they wanted it, but you didn't intend by that to imply that you were going to discontinue all other operating arrangements that you had; is that right?

A. That is right.

Q. Now, this proposition which Mr. Stowell referred to could have happened, you say. That is, if direct shipments were tendered by a member and also a shipment for consolidation were tendered, you would have handled it or might have consolidated it in the same shipment? A. No.

(Testimony of Clyde E. Reynolds.)

Q. No?

A. You say a direct shipment for a non-member? A non-member would not have entered into consolidation.

Q. In other words, you handled that separately?

A. That is right.

Q. Now, if a member had a direct shipment, and that member, or another member, had other shipments that might be consolidated with a direct shipment, did that ever occur?

A. If they wanted it to go straight on a bill it went straight, and if they wanted it consolidated I consolidated [177] it.

Q. In other words, you abided by the members' instructions in that respect?

A. That is right.

Q. You didn't assume the responsibility?

A. That is right.

Mr. Gaudio: That is all.

Examiner Walsh: Mr. Wolf?

Mr. Wolf: No further questions.

Mr. Stowell: I have one more.

Redirect Examination

By Mr. Stowell:

Q. Mr. Reynolds, did you select the air carrier to be used?

A. Not necessarily so. They go in different directions, different stations, so therefore we used the ones that had the best service.

(Testimony of Clyde E. Reynolds.)

Q. But did you decide, assuming there were two air lines whose routes paralleled at least in part, did you decide which one to use? A. Partly.

Mr. Gaudio: I didn't get the form of that question, Mr. Examiner.

Examiner Walsh: Would you read it back, Mr. Reporter.

(Question read.) [178]

A. Yes.

Mr. Stowell: No further questions.

Recross-Examination

By Mr. Gaudio:

Q. It is your testimony, at any rate, that you assumed the responsibility of selecting the direct carrier—or was that pursuant to the direction of the Board of Directors or other officers of Bay Area?

Mr. Stowell: Mr. Examiner, he is asking for a conclusion as to assuming the responsibility. I think we should limit it to direct facts.

Ask him what he did.

Mr. Gaudio: I got the impression from your question, counsel, that he assumed the responsibility.

I want the record to be definite on that point, that he didn't in fact assume the responsibility.

Isn't that true, Mr. Reynolds?

Mr. Stowell: Mr. Examiner, I object to the form of the question. He is calling for a conclusion of the witness. It seems to me that is a conclusion as to whether he did in fact assume the responsibility.

(Testimony of Clyde E. Reynolds.)

That is a matter to be inferred from all the facts and circumstances.

Examiner Walsh: I think that the witness can answer that question by reason of his experience in operating the service. He should know whether he had the responsibility of [179] being able to select a carrier. He should be able to state what he did, to make a statement on what he actually did, whether it was written or implied authority for him to do so. He may state that.

Mr. Gaudio: Do you understand the question, Mr. Reynolds?

The Witness: Yes, I believe so.

Mr. Gaudio: Will you answer it, please.

The Witness: As an agent I had a letter to the effect that I had authority to sign their bills and to deposit it at the airport, in whichever carrier it was agreed on at these different meetings which line got the bulk, and it was alternated some, and it was usually left up to our discretion how to ship the flowers.

Q. (By Mr. Gaudio): During your period of service, Mr. Reynolds, isn't it a fact that you would have numerous meetings with the officers and the Board of Directors in determining policy for the Bay Area account? A. Yes and no.

Q. Let's take the yes part of it, where you did go.

A. Some of these meetings were supposed to

(Testimony of Clyde E. Reynolds.)

have come up every month, but very few of them ever did.

Q. Let's take the ones that you attended. Wasn't discussion had at those meetings among the members of the Board of Directors as to which carrier should be selected and [180] routed to certain destinations and certain areas to be served?

A. That is right.

Q. And you would follow their instructions?

A. In most cases.

Mr. Gaudio: That is all.

Redirect Examination

By Mr. Stowell:

Q. Mr. Reynolds, what happened when an air carrier, whom you might have been directed to use by the Association, couldn't handle the traffic which you had to offer on a particular day? What did you do?

Mr. Gaudio: Just a moment. There again, Mr. Examiner, we are indulging in speculation.

Mr. Stowell: I will rephrase the question.

Q. (By Mr. Stowell): Were there any days, Mr. Reynolds, when any particular carrier to which you had tendered boxes of flowers could not handle the load?

A. There has been.

Q. On that particular occasion can you recall what your course of action was?

A. To find what carrier could handle it.

Q. Mr. Reynolds, before you did that did you

(Testimony of Clyde E. Reynolds.)

call up the president of Bay Area to discover what his attitude [181] was?

A. I don't recall doing that.

Q. But you tendered your boxes and your flower traffic, however, to any carrier which could provide you the necessary capacity to get those flowers out that night; is that correct? A. Yes.

Mr. Stowell: No further questions.

Mr. Gaudio: I should like to carry on this discussion but——

Examiner Walsh: I think I would like to ask a question here to clear up a little point.

Mr. Reynolds, if you had at various times selected air carries for the shipment of your flowers which the Board of Directors, we will say, didn't agree with, and they ordered you to ship you flowers by some other line, would you have any discretion in the matter of selecting a carrier other than their choosing?

The Witness: Absolutely not. They were the boss.

Mr. Gaudio: That is all.

Any more questions, Mr. Stowell?

Mr. Stowell: No more questions.

Examiner Walsh: If not, thank you, Mr. Reynolds. You may be excused, subject to recall, of course.

(Witness excused.) [182]

LEON D. GREGOIRE

was called as a witness by and on behalf of the Enforcement Attorney, and having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Stowell:

Q. Will you please give your name to the reporter? A. Leon D. Gregoire.

Q. Mr. Gregoire, are you a member of Bay Area? A. No, I am not.

Q. Were you ever contacted by Mr. Reynolds?

A. No.

Q. Mrs. Decia? [191]

A. No. By whom did you say?

Q. Mrs. Decia.

A. You mean Mrs. Decia from California Floral——

Q. Yes.

A. No. At least not to my knowledge.

Examiner Walsh: Let's find out who Mr. Gregoire is.

Mr. Stowell: I am sorry.

Q. (By Mr. Stowell): Would you please state your occupation, Mr. Gregoire?

A. Wholesale florist, I imagine.

Q. I show you a document on the letterhead of the Consolidated Flower Shipments, Inc., Bay Area, which sets forth certain commodity rates. Have you ever seen this document?

A. To my knowledge, no.

(Testimony of Leon D. Gregoire.)

Q. Mr. Gregoire, do you sell a lot of flowers in the East?

A. Not too many, no. What do you call the East?

Q. I mean east of California.

A. Well, east of California is a lot of area. We do a little, possibly.

Q. Do you ship flowers by air?

A. Just about all of them.

Q. Have you ever shipped via Airborne?

A. Yes, quite a bit. [192]

Q. Do you sell flowers on consignment?

A. No, not as a rule. The only time we ever ship a consignment shipment is if something goes by mistake we return it to the account by consignment shipment. But as a rule our shipments are direct sales.

Q. Are you acquainted with the Stuppy Supply Company? A. Yes.

Q. Who are they?

A. Well, wholesale florists with offices in Kansas City, Dallas, Texas, and St. Joe, Missouri.

Q. Do you sell flowers to Stuppy?

A. Quite a bit, yes.

Q. Consignment? A. No.

Q. How do you ship your flowers to Stuppy by air? A. Which air line, do you mean?

Q. Well, I will leave it up to you to tell me.

A. It depends where space is available. At times

(Testimony of Leon D. Gregoire.)

through TWA, and at other times through Slick.

Q. Do you ever use services of an intermediate firm prior to tendering it to the air carrier?

A. We did in the past, but we don't do it any more now.

Q. Were you using the services of Airborne in June of 1951?

A. I can't say offhand, but I believe I was, into Kansas [193] City and some of those points.

Q. I show you a photostatic copy of a letter, Mr. Gregoire, addressed to you from the Stuppy Supply Company. Would you examine this, please.

Mr. Gaudio: Do you have another copy?

Mr. Stowell: I will show it to you.

The Witness: I don't recall this.

Mr. Stowell: The letter is addressed to you, and I want to know whether you received that letter.

Mr. Gaudio: I thought it was his letter you were referring to.

Mr. Stowell: No, the letter was sent to him.

The Witness: I won't swear that I didn't. I am not sure. I get quite a bit of correspondence.

Mr. Stowell: I will ask the Examiner for a short recess. You could call your office to find out whether you received it.

Mr. Gaudio: Show it to me, Mr. Stowell, and it might save time.

Mr. Stowell: Very well.

Mr. Gaudio, do you have any objection to having this—

(Testimony of Leon D. Gregoire.)

Mr. Gaudio: I appreciate that it is not a document signed by any of the respondents. Neither is it addressed to them, and we have no way of ascertaining the truth or veracity of the statements contained therein, because it is [194] not this witness' document.

But I don't see that it is particularly objectionable from our standpoint.

The Witness: I imagine you can assume we received the letter, if that would have any bearing on it.

Mr. Gaudio: Unless the Examiner has some specific basis upon which he in his opinion wishes to exclude it.

Examiner Walsh: No, I have no particular reason for doing so. It is just one of those hundreds of situations that we run up against every now and then, where it would cost an exorbitant amount of money to bring someone in to give testimony on something like this from a distant point to establish something which may or may not be important in the case.

Mr. Stowell: Mr. Examiner, I am offering this not for the truth of the statements, necessarily, but the fact that he received the letter and that it is a routing request via Bay Area. It seems to me that if Mr. Gregoire will agree that it is authentic, it is certainly admissible for that. It is a routing request, regardless of the accuracy of some of the statements therein, which I am not particularly concerned with at this time.

(Testimony of Leon D. Gregoire.)

Mr. Examiner, I move that this document be marked for identification as EA-74.

Examiner Walsh: The document previously referred to will [195] be marked for identification as Enforcement Attorney's Exhibit No. 74.

(The document above referred to was marked for identification as Enforcement Attorney's Exhibit No. 74.)

Mr. Stowell: At this time I offer the document, Exhibit EA-74 in evidence.

Mr. Gaudio: No objection, Mr. Examiner.

Examiner Walsh: Exhibit EA-74 is received in evidence.

(The document marked as Enforcement Attorney's Exhibit No. 74 was received in evidence.)

Mr. Stowell: I have no further questions.

Examiner Walsh: Any cross-examination, Mr. Gaudio?

Cross-Examination

By Mr. Gaudio:

Q. Mr. Gregoire, I appreciate you say you don't ship too much in the East, at least by air carrier. Is that your testimony? A. That is right.

Q. And is it your testimony also, as I understand it, that you have never routed any of your shipments via Bay Area?

A. That is right.

(Testimony of Leon D. Gregoire.)

Q. In fact, you are not a member of Bay Area?

A. That is right [196]

Q. Have you ever been solicited to become a member of Bay Area?

A. I have been talked to by some of the members in Bay Area.

Q. As another shipper?

A. Just another shipper, suggesting that it might be to my advantage to join them, one thing and another.

Q. You have never joined?

A. I have never joined, because I didn't think it would be advantageous to me.

Mr. Gaudio: This is a photostat. I assume this was taken from an original in someone else's possession?

Mr. Stowell: Yes, that is right.

Mr. Gaudio: At the offices of Mr. Gregoire?

Mr. Stowell: No, I don't believe so. Frankly, I am not aware of the source. It was handed to me quite a long time ago. In fact, it was submitted to our office in Washington about a year ago.

Mr. Gaudio: You don't know by whom?

Mr. Stowell: By the complainant.

Q. (By Mr. Gaudio): I notice in paragraph 2 it reads in part:

“We understand there is a Bayshore Flowers Consolidated”—and the word “shore” is deleted and the word “Area” written over in print. Is that your handwriting? [197] A. No.

(Testimony of Leon D. Gregoire.)

Q. And also on this document there is in script the name John Barulich, Juno 3-1259. Is that in your handwriting, Mr. Gregoire? A. No.

Q. Did you instruct anyone to make those corrections or additions?

A. No, not to my knowledge.

Q. When did you first start to ship by air to the East?

A. In the neighborhood of three years ago.

Q. And I believe your testimony was that that was via Airborne? A. Yes.

Q. Does that mean that you have since gone to some other form of service?

A. Well, for the past, I don't know how long exactly, we have been delivering our own packages to the airport, running our own truck.

Q. For some time now you have run your own truck and delivered to the airport direct?

A. That is right.

Q. And I believe your testimony was that all your shipments to the East are direct sales or direct shipments?

A. Well, I would say the bulk of them. There may be [198] one or two per cent consignment, when we make a mistake.

Q. I assume you have discontinued using Airborne's service. When did that occur?

A. Sometime last year. I am not sure of the exact date.

Q. Would it be about the time of that letter?

(Testimony of Leon D. Gregoire.)

A. I couldn't tell you. I would have to look it up in my records to find out.

Q. How long, if I may ask, have you engaged in operations as a wholesaler of flowers in this area?

A. All my life, I reckon. Dad was in the business quite a few years.

Q. Yours is a sole proprietorship?

A. No, a partnership.

Q. How many others?

A. There are two other partners.

Q. You speak for the firm when you testify here? A. I speak for the firm.

Q. Did the element of the charge alluded to Airborne in this letter have anything to do with your decision to discontinue using their service?

A. I doubt it very much.

Q. In other words, this reads:

"We find that the average overcharge is \$1.50 per box on your end for handling. We believe this way in excess of [199] normal rates."

Was that a contributing factor? Was that rate question a contributing factor in discontinuing their service? A. No.

Q. What particular reason, if any, do you say prompted your discontinuing using Airborne's service?

A. The reason I done it was at the suggestion of most of my accounts.

Q. Beg pardon?

A. My different accounts, I solicited them, and

(Testimony of Leon D. Gregoire.)

they recommended I bring them down direct. They figured it would be a cheaper service. And it has proven slightly cheaper. They don't have that pickup charge to worry about any more.

Mr. Gaudio: That is all. Thank you.

Examiner Walsh: Do you have any questions, Mr. Wolf?

Mr. Wolf: No questions.

Examiner Walsh: Mr. Stowell?

Mr. Stowell: One question.

Redirect Examination

By Mr. Stowell:

Q. Have you ever met Mr. Barulich before?

A. Yes, I did.

Q. How many times have you spoken to him in the past, roughly?

A. I would say about one time. The first time I met him [200] was about the only time I have seen the man.

Q. Did he ever mention to you the idea of joining Bay Area? A. No, he hadn't.

Mr. Stowell: No further questions.

Examiner Walsh: If there are no more questions of Mr. Gregoire, you may be excused. Thank you.

(Witness excused.) [201]

SIDNEY G. ALEXANDER

was called as a witness for and on behalf of the Enforcement Attorney, and having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Stowell:

Q. Would you give your name to the reporter, please? A. Sidney G. Alexander.

Q. What is your occupation?

A. Manager California Floral Company.

Q. Are you acquainted with Virginia Decia?

A. I am.

Q. Are you employed by her? A. Yes.

Q. Do you have custody of the records of the California Floral Company? A. I do.

Q. Are you acquainted with the events which led to the organization of the Bay Area Flower Growers & Shippers [212] Association?

A. Yes, sir.

Q. Did you attend the meetings of the Bay Area Flower Growers & Shippers Association?

A. I did.

Q. Did you examine the records of the Bay Area Flower Growers & Shippers Association, which were maintained by Mrs. Decia?

A. I did.

Q. Was Mrs. Decia an official of the Bay Area group? A. She was the Secretary.

Q. Did she have official custody of the records of the Bay Area group? A. That is right.

(Testimony of Sidney G. Alexander.)

Q. I am wondering if you could tell us what were the circumstances which led to organization of the Bay Area group?

Mr. Gaudio: Mr. Examiner, the only testimony we have on this point is that he knows Mrs. Decia, who was the Secretary.

There is no foundation as to whether this man or his firm was a member of Bay Area, or if he is here as a non-member. And if he is a non-member, the question might call for his conclusion, unless there is a further foundation.

Examiner Walsh: Will you develop that further, Mr. Stowell?

Q. (By Mr. Stowell): Did you participate and collaborate with Mrs. Decia in [213] matters pertaining to the Bay Area group?

A. We originated the Bay Area group. We were the originators of it.

Q. Please answer my question as I asked it. Did you collaborate with Mrs. Decia in matters pertaining to the Bay Area group? A. I did.

Q. (By Mr. Gaudio): In what capacity? You are an employee of California Floral?

A. I am the Manager of California Floral Company.

Q. You are the Manager?

A. That is right.

Q. Are you an owner? A. No.

Q. How long have you been Manager?

A. Five years.

(Testimony of Sidney G. Alexander.)

Q. In your capacity as Manager, do you determine policy for the firm, or not? A. I do.

Q. And was it in your capacity as Manager that you collaborated with Mrs. Decia? A. Yes.

Mr. Gaudio: Proceed, Mr. Stowell.

Mr. Stowell: You have no further objection to this witness' [214] testimony?

Mr. Gaudio: Not on voir dire, no.

Q. (By Mr. Stowell): Would you tell us the circumstances which led to the organization of the Bay Area group?

Mr. Gaudio: Just a moment. I believe that question calls for his conclusion. There might be any number of matters of which he has no knowledge.

I think the question, better phrased, would be, what prompted him, as he says, in organizing Bay Area.

Examiner Walsh: Let the witness tell us his experiences in collaboration with Mrs. Decia, as far as he knows from his personal experience.

Let him relate the facts concerning those circumstances, which I assume, Mr. Stowell, may lead to the organization of that Bay Area.

Will you do that, Mr. Alexander?

The Witness: Yes, sir.

Upon the publication of Slick's Tariffs, possibly in 1947, or possibly '48, when they allowed Consolidated Shipments to go to points in the east, we had contacted Highway Transport in Philadelphia

(Testimony of Sidney G. Alexander.)

as our own individual firm, and grouped shipments into that area as the first consolidation. However, as individuals, it was impossible to continue and maintain that rate, at which time Mr. Decia, who was a member of California Floral [215] Company, at that time contacted about 25 shippers and growers in this locality, who signed an original application of membership in Consolidated Flower Shipments—Bay Area, with the help of Douglas Stark of American Airlines.

That is the best I can recall the origination of it, to my knowledge.

Q. (By Mr. Stowell): Mr. Alexander, I show you a copy of what purports to be a letter dated April 4, 1949. Would you examine this, please? Have you ever seen this document before?

A. I have.

Q. In what connection?

Mr. Gaudio: Do you have a copy?

Mr. Stowell: You have seen it already. It is the same document which was exhibited yesterday.

Mr. Gaudio: Do you have an extra copy of that letter, Mr. Stowell? It has come up several times in the hearing.

Examiner Walsh: I think that possibly we should put a label on that particular document.

Can you state for the record exactly what it is?

Mr. Gaudio: Mr. Examiner, that document was produced yesterday. It has no signatures on it. There was testimony that it was initiated by Mr.

(Testimony of Sidney G. Alexander.)

Reynolds and Mrs. Decia, but now this witness has testified that he took an active part in formulating it, passing it around and getting it signed. I would like to [216] state at this time that that document, the original one, is not in our possession, and if it is in the possession of California Floral or Mr. Reynolds or the Complainant, I would like to have it produced.

Examiner Walsh: Do you know where it is, Mr. Stowell?

Mr. Stowell: The original obviously was directed to Air Carriers, and would be in their possession, and only by subpoenaing the letter from Air Carriers could such a document be secured.

If the Respondent insists on it, we will——

Examiner Walsh: Do you know what Air Carriers might have possession of it?

The Witness: I believe the original copy was given to Mr. Barulich, about two years ago.

Mr. Gaudio: If we are going to offer voluntary statements, Mr. Alexander, how long ago did this occur?

The Witness: When Mr. Barulich asked for all of the documents that we had, of Bay Area, at which time he was Executive Secretary and we were no longer members, he was given the complete file that was in our possession.

Mr. Gaudio: Did you give them to him personally?

The Witness: Yes, I did.

(Testimony of Sidney G. Alexander.)

Q. (By Mr. Gaudio): You personally delivered to Mr. Barulich all of the documents formerly in the possession of Mrs. Decia as Secretary [217] of the Association? A. I did.

Q. When did you do that?

A. I think Mr. Barulich could——

Q. I am asking you, Mr. Alexander. You made the statement.

A. One afternoon about a year or a year and a half ago, I would say.

Q. Where?

A. California Floral Company.

Q. At your office? A. That is right.

Q. Did you take a receipt?

A. I believe a letter from Mr. Zappettini.

Q. A letter from Mr. Zappettini?

A. As President of Bay Area, authorizing the delivery of this material to Mr. Barulich.

Q. And did you take a receipt from Mr. Barulich when you delivered to him these various documents and records? A. I did.

Q. Do you have it in your possession?

A. It should be in our files.

Q. Will you produce it at my request?

A. If it is possible to find it.

Q. I am asking you now to produce it, if it is in your [218] possession.

A. If it is in our possession, we will.

Mr. Gaudio: We will reserve the right to call this witness at a later time for that purpose, Mr. Examiner.

(Testimony of Sidney G. Alexander.)

Q. (By Mr. Gaudio): Was this receipt signed by Mr. Barulich in his hand?

A. Mr. Barulich signed it.

Q. In your presence?

A. In my presence.

Mr. Gaudio: You may proceed, Mr. Stowell.

Mr. Stowell: Thank you.

Q. (By Mr. Stowell): Mr. Alexander, will you tell us to whom the originals of this letter were sent?

A. The originals of the letter were not sent, they were delivered personally by Mr. Barulich and Mr. Reynolds.

Q. Do you know to whom they were delivered?

A. I could not tell you unless I saw the names of who signed it.

Mr. Stowell: Mr. Examiner, at this time I move that the document dated April 4, 1949, be marked for identification as EA-318.

Mr. Gaudio: Is that the letter of April 4, 1949?

Mr. Stowell: That is right.

Examiner Walsh: That particular letter will be marked for [219] identification as EA-318, subject to the production of the original of that letter when the party has been ascertained who now has possession of it.

(The document above referred to was marked for identification as Enforcement Attorney's Exhibit No. EA-318.)

Mr. Wolf: Mr. Examiner, could not the un-

(Testimony of Sidney G. Alexander.)

signed copy go in as the form of the original?

Examiner Walsh: It may, if such corrections might be made as reflected by the originals.

Mr. Wolf: I see.

Q. (By Mr. Stowell): Mr. Alexander, do you know who signed the original of this letter?

A. No, I do not.

Q. Mr. Alexander, do you know who the original subscribers were, to Bay Area group?

A. There signatures would be on that original letter. I could not say, off-hand.

Q. Can you tell us what happened after the original of that letter was delivered to certain air carriers?

What happened, as far as Mrs. Decia was concerned?

Mr. Gaudio: I submit again, it calls for his conclusion.

We could have Mrs. Decia testify.

Q. (By Mr. Stowell): [220] Do you personally know what action Mrs. Decia took after that letter was deposited and delivered at the offices of the air lines? [221]

Mr. Gaudio: That is simply a yes or no question.

Examiner Walsh: The witness can state what action she took if he personally observed those actions.

He should be cautioned to give his testimony from that viewpoint.

A. Just that a meeting was called by the various

(Testimony of Sidney G. Alexander.)

signers of this letter, and the representatives of the air lines, in the formation of the organization.

Q. (By Mr. Stowell): Can you tell us what took place at this meeting?

Mr. Gaudio: That calls for his conclusion.

Mr. Stowell: It calls for his observation, Mr. Examiner.

Mr. Gaudio: Mr. Stowell, this man is not a member of Bay Area. There is no foundation laid that the California Floral Company were in the organization, and there is no foundation laid that this man ever attended any meetings, or in what capacity. I very strenuously object to this witness purporting to bind anyone but himself.

Examiner Walsh: Can you develop that a little further, Mr. Stowell?

Q. (By Mr. Stowell): Mr. Alexander, did you attend meetings of the Bay Area group?

A. I did.

Q. All of the meetings? [222]

A. With the possible exception of one or two.

Q. Of your personal knowledge, was the California Floral Company one of the firms who subscribed to the original of the letter which we were discussing? A. Yes.

Mr. Stowell: Is that agreeable to counsel?

Mr. Gaudio: That establishes the fact that the firm was a member, but he is only an employee, Mr. Stowell.

Mr. Examiner, I have not had any indication

(Testimony of Sidney G. Alexander.)

from Mr. Stowell that Mrs. Decia, who it was admitted on the record was the Secretary, and an officer of the corporation, cannot be produced as a witness here.

We are getting everything second-hand from Mr. Alexander.

Mr. Stowell: Is Mrs. Decia available?

The Witness: She is available.

Mr. Stowell: Mr. Examiner, I will withdraw this witness in favor of Mrs. Decia.

Would you please contact Mrs. Decia immediately, Mr. Alexander? Could you have her here this morning?

The Witness: Is there some way we can get her transportation from Redwood City?

Mr. Wolf: Mr. Examiner, could I ask a few questions before the witness leaves the stand?

Mr. Stowell: We will arrange for her transportation.

Mr. Gaudio: I would like to ask this further question. [223]

Mr. Stowell, is it your purpose, then, to call Mrs. Decia for the purpose of the testimony adduced by this witness?

Mr. Stowell: That is correct.

Mr. Gaudio: Is it in order, then, to move that this testimony be stricken from the record?

Examiner Walsh: I think I am going to order the witness to stand by for further testimony, in

(Testimony of Sidney G. Alexander.)

case it might be needed after Mrs. Decia takes the stand.

The Witness: During business hours, I would have to be there if Mrs. Decia leaves.

Would it be possible for her to come up after I get there?

Examiner Walsh: What I mean is that I want you to stand ready to come back, and we will notify you. I do not want to leave the record in this distorted condition, and whether we will recall you or not will depend upon what develops in the testimony given by Mrs. Decia.

If the record needs supplementing to any extent, it might be necessary for us to call you again.

Mr. Gaudio: Mr. Examiner, the reason I ask that is that if this witness' testimony as far as it goes, remains part of the record, I would like to conclude my cross-examination, even to that extent. Otherwise, I would be willing to forego my cross-examination, if his testimony is stricken.

Examiner Walsh: I will defer action.

You may cross-examine the witness on the testimony he has [224] given, yes.

Mr. Gaudio: Very well.

Examiner Walsh: And it probably would be better to do it that way, and you might restate your motion at some further point in the proceeding, to strike, and I will entertain it.

Mr. Gaudio: Very well.

(Testimony of Sidney G. Alexander.)

Cross-Examination

By Mr. Gaudio:

Q. Mr. Alexander, how many specific meetings of the Board of Directors did you attend personally?

A. Nobody ever said anything about the Board of Directors before. This is the original meeting of the members of the Association.

Q. How many of the, let us call them unorganized meetings of the members before incorporation did you attend?

A. I would say every one. How many, I do not know.

Q. Was it a half a dozen? Less than that? More than that?

A. At least a half a dozen.

Q. And you say these meetings all occurred before formal incorporation, or prior to incorporation?

A. Prior to incorporation.

Q. Do you know that June 14, 1949, was the date of incorporation?

A. I would not know the date. [225]

Q. If I told you that were so, would you disagree with me?

A. No.

Q. So that all of your some six-odd meetings, you attended before that time; is that correct?

A. Yes, sir.

Q. And at this meeting were the members that you say subscribed to this Exhibit EA-318 present?

A. Not all of them.

(Testimony of Sidney G. Alexander.)

Q. How many variously would be present from time to time? A. Possibly 15.

Q. You say 25 subscribed to that letter?

A. I do not know the actual number.

Q. What part did you play in these discussions, Mr. Alexander, on behalf of the firm?

A. On behalf of the firm, Mrs. Decia 90 per cent of the time could not attend, and I was her observer, or acting as secretary for her in her absence.

Q. As a matter of fact, you just sat and listened, did you not, Mr. Alexander? A. Yes, sir.

Q. You did not take an active part in the discussions as such? A. I did at times.

Q. Did you keep any personal notes regarding these meetings [226] on behalf of Mrs. Decia?

A. No, no written notes.

Q. Then you would tell her what transpired?

A. I would.

Q. Then she might or might not act; is that correct?

A. She would discuss it, and if it was for the better interests of the firm, she would act in whatever way she felt accordingly.

Q. How do you know that Mr. Barulich and Mr. Reynolds prepared and circulated the letter of April 4, 1949?

A. I do not believe Mr. Barulich was with the organization at that time.

Q. Then you want to change your former testi-

(Testimony of Sidney G. Alexander.)

mony when you said that Mr. Barulich had a hand in drafting that letter?

A. Mr. Barulich had no hand in drafting the letter. I never stated that.

Q. Did you not testify earlier, Mr. Barulich had a hand in drafting that letter? Correct me if I am wrong.

A. Mr. Reynolds, I never mentioned Mr. Barulich.

Examiner Walsh: He might have. I cannot recall.

Mr. Gaudio: The reporter will pick up his notes at the very outset of the examination, please.

Examiner Walsh: In order to avoid any misunderstanding of it, let the record show that the witness has stated that Mr. Barulich had no hand in preparing this particular letter. That [227] would cure any possible defect that might have occurred earlier in the testimony.

Mr. Gaudio: If he did say it——

Examiner Walsh: I think that will suffice.

Mr. Gaudio: I regret taking up the time, but there has been an allegation in the history of this matter that Mr. Barulich was instrumental for his own personal motives in organizing this association.

That is not the fact, as we will develop throughout the course of the testimony and evidence to be submitted, and if we have taken up some time to attempt to discover whether this witness said that Mr. Barulich did have a part in the beginning, that

(Testimony of Sidney G. Alexander.)

is not the point, and he so stated that in the latter part of his testimony, and I want to be certain that that does not clutter up the record.

Examiner Walsh: I believe the record is clear now on that point.

Q. (By Mr. Gaudio): At the time you attended these meetings, there wasn't any formal organization, was there, Mr. Alexander?

A. No.

Q. So there was not any official secretary, I take it? A. Not to my knowledge.

Q. There was just a group of interested flower shippers and growers in these initial meetings, to organize an [228] association?

A. That is right.

Q. And general discussion prevailed until ultimately the incorporation took place; is that correct?

A. That is correct.

Q. Do you know whether any of the transcribed minutes of those pre-incorporation meetings are available? A. I do not believe so.

Q. Did you keep minutes for Mrs. Decia?

A. As a matter of fact, I could not state whether Mrs. Decia was Secretary of the original group or not.

Q. I see. So, to that extent, you want to qualify your prior testimony, in any event?

A. In my prior testimony I did state Mrs. Decia was Secretary of the Bay Area Consolidated Flower Shippers, but no certain date.

(Testimony of Sidney G. Alexander.)

Q. Are you changing that statement or not?

A. My original answer stands. She was Secretary of the Bay Area group.

Q. As incorporated?

A. Of the Bay Area group. I do not know if there were any original officers.

Q. Were you ever personally appointed Secretary of this group? A. Never. [229]

Q. Did you ever act as Secretary of the group at any of these meetings? A. Never.

Q. When you referred to Slick's Tariffs, which allowed the grouping of shipments, were you referring to this collect distribution facility that was available at one time?

A. Well, actually, that was wrong. That was on our own initiative. It had nothing to do with any other shippers or with any organization group, at all.

Q. But there was, prior to the time Bay Area was incorporated, to your knowledge, a tariff in effect that allowed a system called collect distribution?

Are you familiar with that term?

A. I am familiar with that term, but if it applied to those days or not, I do not know. That is ancient history, now.

Q. At any rate, there was a tariff provision that your firm, of which you are Manager, and some of the officers, thought might be of advantage to them if formed as a group of shippers?

(Testimony of Sidney G. Alexander.)

A. That is right. Not as a group of shippers, no. As a group of consignees.

Q. You mean the receipt of shipments in California? A. No, sir.

Q. Then, when you say, "group of consignees" you are referring to someone else's advantage; is that correct? A. Yes, sir. [230]

Q. You do not propose to speak in their behalf, do you?

A. That is the only one we have been interested in. At that time we were interested in saving the consignees their charges on air freight, which was the reason we attempted that first shipment.

Q. I see what you mean. You mean that you were seeking to obtain the lowest delivery cost to the consignees in the east? A. Yes.

Q. I see. And it was thought that this Association could better effect that purpose; is that right?

A. Yes, sir.

Q. Do you know if there were any other reasons which prompted this group to come together at that time? A. That is the sole purpose.

Mr. Gaudio: Thank you.

Examiner Walsh: Mr. Wolf.

Q. (By Mr. Wolf): Mr. Alexander, you have mentioned collect distribution. What does that mean?

A. To the best of my knowledge, that is where a group of shipments are consolidated through a definite carrier to a locality, and upon receipt on

(Testimony of Sidney G. Alexander.)

the other end, the shipments go completely collect to one agent, and in such a manner they are re-distributed to the different outlets in that locality; and by doing so, a cheaper rate is obtained. [231]

Q. I see. And originally, the air lines performed that service; is that correct? A. Yes, sir.

Q. And subsequently the air carriers were not permitted to perform that service?

A. That is right, sir.

Q. At the time this group was organized, the carriers did not have in their tariffs any collect distribution service, did they?

A. To my knowledge, they did not.

Q. That was all prior to the formation of this organization? A. Yes, sir.

Q. Were you asked a question on Direct Examination that after this letter of April 4 was signed up, a meeting was called of the flower shippers?

A. Yes, sir.

Q. Did you attend that first meeting?

A. I did, sir.

Q. And what happened there?

A. The meeting was held at the California Floral Company, in our office. The objects of the Association were explained by a representative of one of the carriers.

I could not say whether it was Slick, United, American, or Flying Tigers, because at different meetings, there would be a [232] different representative there.

(Testimony of Sidney G. Alexander.)

And as to the availability of Mr. Reynolds for carrying it to the airport and consolidating it there—Possibly we had four or five meetings at California Floral Company in the formation of the original group.

Q. I see. And you attended those meetings?

A. I attended every one.

Q. You mentioned, in answer to my last question, that at the first meeting the objectives of the group were explained.

Do you recall what explanation was made?

A. Just in the matter of group shipping.

Mr. Gaudio: Just a moment. By whom? Let us have a more specific foundation on that, counsel.

Examiner Walsh: I think he testified it was either by Slick or the Flying Tigers.

Mr. Gaudio: Are you referring to the air line representative?

Mr. Wolf: Yes.

Mr. Gaudio: Very well.

The Witness: Could I hear that question again?

Examiner Walsh: The reporter will read it back.

(Question read.)

Mr. Wolf: I will withdraw the question, and save time.

Q. (By Mr. Wolf): You testified in answer to my former question that the [233] objectives of the organization were explained. What were those objectives stated to be?

(Testimony of Sidney G. Alexander.)

A. Well, there were two. First, that by the grouping of shipments into any locality, that would ultimately save the consignee charges on delivery; and secondly, by grouping together we could insure receiving a definite insurance rate to cover any damage that might occur en route.

Q. I see. After these original meetings, do you recall any discussion as to whom the members of the group could be?

A. It was open to all shippers and growers alike.

Q. What type of shippers and growers?

A. Flower shippers.

Q. All flower shippers and growers?

A. Yes, sir.

Examiner Walsh: You are speaking of the flower growers and shippers in this area?

The Witness: In this area, yes.

Examiner Walsh: Going back to a question Mr. Wolf asked you about collect distribution, does that term imply a C.O.D. delivery, or does it just refer to the physical aspects of assembling and distributing shipments?

The Witness: It does not apply to the C.O.D.

Examiner Walsh: Does it merely mean that you collect the various shipments at one point, ship them by air carrier, and distribute them to various consignees at the other end? [234]

The Witness: That is right.

Mr. Gaudio: I have a few more questions.

(Testimony of Sidney G. Alexander.)

Q. (By Mr. Gaudio): Mr. Alexander, when you say that the organization was open to all the growers and shippers in this area, do you mean by that, that it was open to all that had subscribed to a letter that was addressed to the carriers; is that what you mean?

A. It was open to all who signed the letter. It was presented to everybody.

Q. It was presented to how many, to your personal knowledge?

A. To at least thirty.

A. To at least thirty.

Q. Is it your testimony, Mr. Alexander, that that is the extent and total number of growers and shippers of flowers in the San Francisco Bay area and peninsula?

A. At that time, I would say there were maybe 50.

Q. So at that time, it might represent 50 per cent; is that correct?

A. Well, if they were not contacted with the letter, they were contacted by 'phone.

Q. And of this sum of 50 that you referred to, to your knowledge 25 signed that letter?

A. Twenty-five were interested in an organization.

Q. And when you say that this service was to be made available, you intend, I assume—correct me if I am wrong— [235] that the service was to be made available to those that signed the letter?

A. To those in the organization, yes, sir.

Mr. Gaudio: Thank you.

(Testimony of Sidney G. Alexander.)

Examiner Walsh: Do you have any Redirect, Mr. Stowell?

Mr. Stowell: No.

Examiner Walsh: If there are no more questions of Mr. Alexander, you may be excused, Mr. Alexander, subject to recall. And you indicated a willingness, a few moments ago, to search your file for the purpose of obtaining a receipt for records allegedly delivered to Mr. Barulich.

The Witness: I will do my best, sir.

Examiner Walsh: And will you notify Mr. Stowell with respect to whether or not that receipt can be produced—either way, whether it can, or whether it cannot?

The Witness: I will do so.

(Witness excused.)

Mr. Stowell: At this time I would like to call Mr. Walker.

Whereupon,

CLARENCE WALKER, JR.

was called as a witness for and on behalf of the Enforcement Attorney, and, having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Stowell: [236]

Q. Will you give your name to the reporter, please? A. Clarence Walker, Jr.

(Testimony of Clarence Walker, Jr.)

Q. What business are you in, Mr. Walker?

A. Wholesale flower shipper.

Q. What is your firm name, if any?

A. Floral Service.

Q. Where are you located?

A. Belmont, California.

Q. Are you acquainted with Mr. John C. Barulich?
A. I am.

Q. Where have you seen him?

A. I first met Mr. Barulich at a house party. Secondly, I met him at our office.

Q. Could you tell us the substance of the conversations, if any, at your first meeting with Mr. Barulich?

Mr. Gaudio: When was this house party that you are talking about?

The Witness: The house party could have been two or three years ago. It was possibly three years ago.

It had nothing to do with Bay Area at that time. He was not connected with them at all, then. But that is where I first met him.

Mr. Stowell: Mr. Examiner, the latter part of that answer was volunteered information.

Examiner Walsh: The witness is entitled to explain his [237] answer. He meant to eliminate any possible implication that at the time that he met Mr. Barulich at the house party, that that meeting had anything to do with the Bay Area Association.

Proceed, Mr. Stowell.

(Testimony of Clarence Walker, Jr.)

Q. (By Mr. Stowell): Could you tell us about when your second meeting with Mr. Barulich took place?

A. As far as the date goes, it is pretty hard, but it was after the forming of Bay Area. Mr. Barulich came to our office and asked me if I was interested in Bay Area shipping of cut flowers, at which time I told Mr. Barulich that we were not.

Q. Did he ask you to join the Bay Area group?

A. He told us he would like to have us join the Bay Area group with the others.

Q. Would you say that this took place some time in October of 1949?

A. I would not be certain about the date, but it could have been.

Q. What was your answer?

A. No, we were not interested at that time.

Q. Did Mr. Barulich mention a membership fee?

A. At that time, to my knowledge, there was no membership fee mentioned.

Q. Did Mr. Barulich mention an application form which must be executed for membership in Bay Area? [238]

A. No, he did not.

Q. Did he suggest that you ship via Bay Area for a trial period before you made up your mind whether you would join Bay Area?

A. I would not like to state that, because I am not sure, at that time. It has been so long ago. I told him that I was not interested at that time, that

(Testimony of Clarence Walker, Jr.)

we were well satisfied with our present connections, and that maybe a little later, we would be.

I understand that at a later date, Mr. Barulich came to the office to see me. I was not in, and he talked to my auditor and bookkeeper, but I have no recollection of their conversation, because we were not interested in Bay Area.

Before that, if I may add, this letter was brought to me by Mr. Al Decia. It was a blank form, and we were asked to sign it, and that it would mean nothing, just that we were trying to form a new organization. And when I put my name on the top line, I was the first one to sign it, and I have never used it, and never heard another word about it.

Q. Did Mr. Barulich mention that your name was on this letter, when he spoke to you?

A. No, he did not mention that my name was on the letter, to my knowledge, at that time.

Q. Have you ever shipped via Bay Area?

A. No, we have not. [239]

Q. Have you received requests from your consignees to ship via Bay Area?

A. Yes, we have received requests, several of them.

Q. Can you recall one in particular?

A. Mr. Cereghino—

Mr. Gaudio: Just a moment. If that request was in writing, it would refer to a written document. I am assuming it was from someone in the east.

(Testimony of Clarence Walker, Jr.)

The Witness: Yes.

Mr. Stowell: Mr. Examiner, I wish he would be permitted to continue. I will have that particular document identified that he has reference to.

The Witness: We had a request from Mr. Cereghino, who represents us in New York, on some of our colored merchandise, to ship through Bay Area. At the same time, we have had letters from various people from various markets, requesting Bay Area, which we have never paid any attention to, but just go along and ship the way we were.

However, at one time, we received a letter, or I should say a form, from an association in New York, requesting all the shipments that go in there to be forwarded via Bay Area to a warehouse in New York for redistributing.

This document we looked at and laughed about, and it was thrown away. But it was from a New York organization.

Mr. Gaudio: Just a moment. Mr. Examiner, I understood the [240] witness to be testifying to the contents of a letter which was to be produced. Now it develops that that letter is not available.

Mr. Stowell: That letter will be made available shortly, as soon as the witness completes his answer.

Mr. Gaudio: Are you referring to the one that was destroyed?

Mr. Stowell: He is referring to other requests from consignees.

The Witness: Just other requests.

(Testimony of Clarence Walker, Jr.)

Mr. Gaudio: Well, I ask that the answer be stricken, Mr. Examiner, on a hearsay rule.

“Did you receive requests?” “Yes.”—period. And if he is going to testify to the contents of these letters, I want them produced.

Examiner Walsh: I will strike the part with respect to the specific letter, and I will allow the part of the answer to stand, that he has received other requests. To that extent the objection is sustained.

Mr. Gaudio: Thank you, Mr. Examiner.

Q. (By Mr. Stowell): Can you recall the names of the firms from whom you received these requests?

A. I would have to look through the records and wires that we have received, requesting it. Off-hand, it is pretty [241] hard to state for sure.

I can say that the markets that we have had requests from, like Detroit, New York, we have had various types of requests from there.

Q. Would you produce at this hearing your records containing such requests?

A. I would be very glad to.

Q. Who is Edward Cereghino?

A. Edward Cereghino is a salesman for various West Coast florists. He handles a certain line of Lorac products that we produce.

Q. What arrangements do you have with Mr. Cereghino for the shipments and sale of your merchandise?

(Testimony of Clarence Walker, Jr.)

A. He handles, as I say, our products of the Lorac Company—that is, painted eucalyptus and colored grasses. He sells those through the east and middle west on a commission basis.

Q. When you ship to Mr. Cereghino, do you ship to him on consignment?

A. No, we do not.

Q. Does he go out and secure orders?

A. He secures orders, and we bill him, and they are shipped to the various accounts that he has sent the orders in for.

Q. And Mr. Cereghino secures the [242] collection?

A. He collects, and then mails us his check, and at the same time he tells us the customers' requests as to the way of shipping. Most of our items are shipped by truck, until about the first two weeks in December, when our item is a Christmas item, and at that time we are requested to ship by air or rail.

Q. What are your instructions to Mr. Cereghino on the sale of your merchandise? And by that, I mean, what kind of sales material do you give him, or advertising material?

A. We do not give him any advertising material other than the prices of our products.

Q. Have you ever suggested to him that he mention Bay Area to your customers?

A. No.

Q. I show you a copy of a letter addressed to you. Would you examine it? It has no date on it,

(Testimony of Clarence Walker, Jr.)

and it is from Edward Cereghino, of 45 West 28th Street, New York.

Examiner Walsh: Did you say whether that is a copy or the original?

Mr. Stowell: Have you the original of this letter in your possession?

The Witness: The original is in our file some place, that is for sure. I remember that letter, very, very plainly.

Q. (By Mr. Stowell): Could you produce the original?

A. I will do the best I can to find it, but under oath, [243] that is the same letter that was sent to me.

Q. Can you place the time of this letter, approximately?

A. It was last year, during the acacia glut season, I can assure you of that.

Mr. Gaudio: I do not want to seem over-technical, but there are so many documents that if we can have the benefit of an original in this proceeding, I would certainly like to have it.

The Witness: I will certainly do all I can to get it for you, sir.

Examiner Walsh: You are offering that for identification?

Mr. Stowell: Yes. At this time I move that the document referred to be marked for identification as EA-319.

Examiner Walsh: That will be marked as En-

(Testimony of Clarence Walker, Jr.)

forcement Attorney's Exhibit 319, subject to the same limitation that I stated a while ago, that if at all possible, the original be produced to substitute in lieu of it.

(The document above referred to was marked for identification as Enforcement Attorney's Exhibit No. 319.)

Q. (By Mr. Stowell): Mr. Walker, I show you what purports to be a rate memorandum from Consolidated Flower Shipments, Inc., Bay Area. Would you please examine it.

Have you ever seen that document before? [244]

A. To my knowledge, no. We have received documents from air lines. They are just glanced at and thrown away. As I say, we are very satisfied with our own connections, now.

Mr. Gaudio: I ask that the answer be stricken, except that the answer is no.

Examiner Walsh: The answer is a flat "no"?

The Witness: That is right, no.

Mr. Stowell: I have no further questions.

Examiner Walsh: Mr. Gaudio, you may cross-examine.

Cross-Examination

By Mr. Gaudio:

Q. Mr. Walker, are you a proprietor or owner of the Floral Service, in Belmont?

A. Partner.

Q. How many partners are there?

(Testimony of Clarence Walker, Jr.)

A. My mother.

Q. A family partnership?

A. That is right.

Q. Would you say that your second meeting with Mr. Barulich was after September of 1949?

A. It is awfully hard to say on the date, it is so long ago. And it was nothing that I was interested in. If I was interested, I would have remembered it. It was more or less, he just came in and we talked.

Q. Was he alone? [245]

A. I may be wrong, but I think there was someone else with him. I am not sure. I think Mr. Bonaccorsi was with him. Really, I do not exactly remember.

Q. And did they tell you at the time that Mr. Barulich had been appointed either a traffic manager or executive secretary?

A. That he was connected with it. I do not know which one it was, but he was connected with Bay Area.

Q. Who opened the conversation, if you remember, Mr. Bonaccorsi or Mr. Barulich?

A. I could not say for sure.

Q. Would you say that their primary purpose in their visit, as discussed with you in the conversation, was the question of whether you either were or should be a member of Bay Area?

A. They were more or less asking me if I would like to become a member of Bay Area.

(Testimony of Clarence Walker, Jr.)

Q. Prior to that time, had you shipped any single shipment via Bay Area? A. No, sir.

Q. Did you partake in any of the preliminary organization meetings?

A. No meetings such as I heard of before, but I have been invited to some of the American Airlines meetings, discussing shipping.

Q. And at these meetings with the air lines, were other [246] floral shippers present?

A. Yes, there were.

Q. Do you recall ever seeing Mr. Zappettini there?

A. I have seen him at meetings, yes.

Q. And Mr. Bonaccorsi?

A. Yes, almost all of them.

Q. Do you ever remember Mr. Enoch at any of them?

A. Either Mr. Enoch or his partner, his associate, Mr. Pierce.

Q. Mr. Nuckton, for example? Do you know Mr. Nuckton? A. Yes, I know him.

Q. Was he also there?

A. I only met him at one meeting. It was not with the American Airlines.

Q. How many of these meetings did you personally attend? A. Three.

Q. Three of them?

A. They were held at the Benjamin Franklin Hotel.

Q. In San Mateo? A. That is right.

(Testimony of Clarence Walker, Jr.)

Q. Do you know how soon thereafter Bay Area was completely organized—that is, finally incorporated? A. No, sir.

Q. What was your last participation at these meetings?

A. It was in connection with shipping flowers with American [247] Airlines, and I was invited. I was asked to attend, and I did, and it really meant nothing.

Q. As a matter of fact, as you previously stated, you had signed that letter that was sent to the air lines?

A. I had signed that for Mr. Al Decia, yes, but at that time there was no Bay Area.

Q. I know that. And in turn the air lines, in holding their meetings, I assume, sent you an informal request to be present at some of these organization meetings?

A. Mr. Stark 'phoned me.

Q. And you attended them? A. Yes, sir.

Q. And you discussed the purposes and intentions of this organization with some of the other shippers and representatives of the air lines?

A. I did not discuss anything, myself.

Q. Did you, at any of these meetings, retract your signature, or your having subscribed to this letter? A. No, not at any stage.

Q. Did you at any of the meetings?

A. No, I did not.

Q. So, insofar as that group is concerned, your

(Testimony of Clarence Walker, Jr.)

name had appeared on this letter, and to their knowledge had never been withdrawn, as a party interested in the organization of Bay Area? [248]

A. That is right.

Mr. Gaudio: That is all. Thank you.

Examiner Walsh: Mr. Wolf?

Mr. Wolf: No questions.

Examiner Walsh: Any Redirect?

Mr. Stowell: No.

Examiner Walsh: You may be excused. Thank you.

Mr. Walker, I perhaps should call your attention to the fact that you have agreed to produce certain originals of documents, presumably letters from consignees, requesting that you forward your shipments via Bay Area. Will you produce as many of those as you can find?

Mr. Stowell: Mr. Examiner, the Cereghino letter, as well as any requests from other consignees.

The Witness: Yes. Do you want me to mail those, or send those up here?

Mr. Stowell: Have those brought to me tomorrow, if possible.

The Witness: I will.

(Witness excused.) [249]

* * *

LENO PIAZZA, JR.

was called as a witness for and on behalf of the Enforcement [250] Attorney, and, having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Stowell:

Q. Will you give your full name to the reporter, please? A. Leno Piazza, Jr.

Q. What business are you engaged in?

A. Wholesale florist.

Q. Where? A. Oakland.

Q. What is the firm name?

A. L. Piazza, Wholesale Florist.

Q. What is the exact connection between you and the firm name that you just mentioned?

A. Partner.

Q. Who is Leno Piazza?

A. That is my father.

Q. And what is his connection with the firm?

A. Owner.

Q. Have you ever shipped via Bay Area?

A. Yes.

Q. About when?

A. I believe in 1949, somewhere in there.

Q. Did you bring with you certain flower manifests, covering your shipments over Bay [251] Area? A. Yes, I did.

Q. Mr. Piazza, you have been sitting in this room and listening to the discussion about a letter dated April 4, which was identified as EA-318. Would

(Testimony of Leno Piazza, Jr.)

you examine it, please? Did you sign the original of that letter?

A. If this is the original letter that they started with, we signed the original.

Q. When you say "we," who do you mean?

A. Either my father or I signed it.

Mr. Gaudio: Just a moment. Did you sign it?

The Witness: I really do not recall.

Mr. Gaudio: Do you know whether your father in fact signed it?

The Witness: One of us signed it.

Mr. Gaudio: Very well.

Examiner Walsh: Let the witness read the contents of that letter thoroughly, so that he might be able to state whether that is the same writing that was shown to him, and the same as the writing which he signed.

The Witness: As far as I know, this is the same.

Q. (By Mr. Stowell): Did you attend any meetings of the Bay Area group after this letter was signed?

A. I do not believe we did, either of us. I know I did not. [252]

Q. How about your father?

A. I doubt it very much.

Q. Were you or your father, if you know, ever requested to make any payments to the Bay Area group, for any purpose whatsoever?

A. I am not sure of that, I do not really recall whether we were or not.

(Testimony of Leno Piazza, Jr.)

Q. Can you tell me about when your firm started to ship via Bay Area?

A. Around August, through the chrysanthemum season.

Mr. Gaudio: Of what year?

The Witness: That would be 1949.

Mr. Gaudio: August to October of 1949?

The Witness: It would be that period, possibly a little sooner.

Q. (By Mr. Stowell): At this time, Mr. Piazza, I show you American Airlines flower manifest, dated September 2, 1949. There were two for September 2, two for September 5, two for September 6, one for September 7, one for September 8, three for September 9, which indicate Leno Piazza as consignor, and which indicate Reynolds Brothers in the corner, as a notation.

Mr. Piazza, I ask you whether these are flower manifests representing shipments which your firm made via the Bay Area Consolidation? [253]

A. They are.

Q. Have you, or has your father, or your firm, ever in fact made any payments to the Bay Area group? A. To my knowledge, we have not.

Q. Is it not a fact that a careful check was made of your accounting records, at my request, for the period June, 1949, to January, 1951, and there was no evidence of any such payments, or other disbursements being made, to the Bay Area group?

A. That is right.

(Testimony of Leno Piazza, Jr.)

Mr. Gaudio: What date was that, the closing date?

Mr. Stowell: January, 1950. I am sorry.

That was from July, 1949, to January, 1950.

The Witness: That is right.

Q. (By Mr. Stowell): Can you tell us about when you stopped shipping via the Bay Area group?

A. I think it was around—it was a short time that we did business with them, or shipped anything through them.

Q. Have you ever met Mr. Barulich?

A. I do not recall meeting him. I have heard the name.

Mr. Stowell: I have no further questions of this witness.

Examiner Walsh: Cross-examination, Mr. Gaudio.

Cross-Examination

By Mr. Gaudio:

Q. Mr. Piazza, did you know Mr. Reynolds before you [254] shipped via Bay Area?

A. No. I say, no. I do not recall knowing him. The name was quite talked about at the beginning of Bay Area.

Q. Did your firm use the Reynolds Transfer and Pickup Service, before September of 1949?

A. I do not believe so.

Q. Who presented this letter that you signed, April 4, the letter that you identified and read?

(Testimony of Leno Piazza, Jr.)

A. It is so far back that I really do not exactly remember who it was.

Q. Was it Mrs. Decia?

A. No. Mrs. Decia has not been to our store.

Q. Has not been?

A. Not been to our place.

Q. Did you meet Mr. Reynolds before you sent your first shipment via Bay Area?

A. I believe Mr. Reynolds could have been over there once, at the very most, probably contacted my father.

Q. Do you believe that was when he might have obtained your father's signature to this letter?

A. I could not say for sure.

Q. At the time that letter was presented to your firm, did you indulge in any discussions with your father regarding membership in this proposed association?

A. Well, we did discuss—we discussed only the signing [255] of the original letter.

Q. That letter does not mention anything about what the responsibilities would be of the members, if the organization was formed, does it?

A. No. It was presented, and we could sign it if we were interested, and it did not mean anything as far as legal, or anything else, that we would be tied down to.

Q. Yes. And it does not mention anything about the payment of dues, or any other assessments to the organization to be formed, does it?

(Testimony of Leno Piazza, Jr.)

A. No.

Q. Has a demand for the payment of dues ever been made upon your firm? A. To me, no.

Q. **But I mean to your firm?**

A. I could not say. I think that was discussed with my father.

Q. The matter of dues might have been discussed with your father? A. Yes.

Q. And is it not a fact that your firm, when the question of dues first arose in connection with Bay Area, decided not to pay dues, and thereby discontinued its activity as a member of Bay Area?

Is not that true? [256]

A. The reason for discontinuing had nothing to do with dues.

Q. When did you decide to discontinue?

A. At that particular time we were rather disgusted with American Airlines and their tactics, and we were quite satisfied with the other carrier who was handling our merchandise, so we thought we would drop the whole thing and discontinue then.

Q. And would it be purely coincidental that that decision was made at about the time that demand for the payment of dues was made?

A. That was just about the time, and then we dropped them.

Q. Have you ever attended any of the meetings of Bay Area since its incorporation?

A. No, I have not.

(Testimony of Leno Piazza, Jr.)

Q. Did you attend any of the pre-incorporation meetings? A. No.

Q. Did your father?

A. Possibly. I could not say for sure. I doubt it.

Q. At any rate, your firm went on record as favoring the organization of this group in the first instance, by signing that letter?

A. I would not say it was favoring. It was considering it.

Q. Did you ever notify the group that you were no longer [257] considering it?

A. I believe my father did.

Q. And when did that take place, at the time the dues were demanded?

A. No, at the time we were having the argument with American Airlines. I mean, we were rather disgusted, as I said before, and we thought we would rather forget about the whole thing.

Q. Did Mr. Reynolds—I believe the record might show this—handle all of these pickups that were shown by the manifests shown you?

A. Did he handle them, Reynolds, Brothers?

Q. Yes. A. Yes.

Q. Did you ever have any indication from Mr. Reynolds that he would no longer go to Oakland to make pickups? A. I do not recall.

Q. I believe, if my notes are correct here, your last shipment was on September 9; is that right?

A. September 9, I believe, 1949.

Q. So you shipped for about one week; is that right? A. A week or two.

(Testimony of Leno Piazza, Jr.)

Q. From the second to the ninth of September.

Did you ever receive—did Mr. Reynolds ever call at your place of business after the 9th? [258]

A. No, not after that. I was thinking, he picked up there, himself, one day.

Q. After the 9th?

A. No, before the 9th, during that week.

Q. But do you know whether Reynolds Brothers Transfer Company ever called at your place of business after September 9?

A. No. After we dropped them, he did not come over any more.

Q. Is it your testimony that this dropping of either membership or use of the American Airlines service, occurred about September 9, 1949?

A. That is right.

Mr. Gaudio: I think that is all.

Examiner Walsh: Mr. Wolf?

Mr. Wolf: Yes, I have a few questions.

Q. (By Mr. Wolf): Mr. Piazza, did you ever sign any bylaws of Bay Area?

A. What do you mean?

Q. Did you ever sign any bylaws?

A. I do not recall.

Q. The only thing you ever signed that would pertain to the Consolidated Flowers group was this one letter that either you or your father signed; is that correct? A. Yes.

Q. Did you personally ever attend any meetings of the [259] group? A. No.

(Testimony of Leno Piazza, Jr.)

Q. What is your best recollection as to whether or not your father did?

A. We received different notices, and there was talk that he would go, but as far as anything definite, that he did attend, I could not say.

Q. You say you received notices of meetings?

A. I have received 'phone calls that there were meetings that we should attend.

Q. Do you know from whom those 'phone calls were? A. I do not recall definitely.

In other words, after we had no connection with it, we just did not pay much attention to the calls, or anything in writing that did come to us.

Q. Did you ever receive one of these (indicating)? A. I do not recall seeing this.

Examiner Walsh: That is a rate memorandum, I believe.

Mr. Gaudio: What was his answer to the question?

Mr. Wolf: No.

Q. (By Mr. Wolf): After September 9, when you stopped shipping via Bay Area, did you receive any calls from any official of Bay Area requesting that you continue shipping by them, do you recall?

A. I do not recall. [260]

Q. Do you recall any requests from any official of Bay Area after September 9, 1949, that you continue in the organization?

A. I vaguely remember Mr. Bonaccorsi coming to the store, now that you mention it. He was over

(Testimony of Leno Piazza, Jr.)

talking with my father, and in the conversation they got onto Bay Area Flower Shipping. What was said, or anything about it, I did not pay much attention to it, but there was some discussion as to this Bay Area business.

Q. Do you recall if the discussion involved the question of whether you were in or out?

A. I do not think it went into that too much.

Mr. Wolf: That is all. Thank you.

Examiner Walsh: Is there any redirect, Mr. Stowell?

Redirect Examination

By Mr. Stowell:

Q. Mr. Piazza, do you know whether your father ever filed with the Civil Aeronautics Board either a formal or informal complaint respecting the practices of American Airlines and Bay Area, so far as it affected your business or your father's business?

Mr. Gaudio: Just a moment. I do not know what counsel intends by that question. If there are two separate complaint matters pending, as there might have been at the time, it would be incompetent, irrelevant and immaterial as pertaining to [261] American Airlines. I object to the question on that ground.

Mr. Stowell: Mr. Examiner, I am trying to explore a little more, the reasons for their withdrawal from Bay Area, and I am not interested in the American Airlines phase of it.

(Testimony of Leno Piazza, Jr.)

Mr. Gaudio: That question is for the Examiner to determine on the testimony.

Mr. Stowell: I am making the point to the Examiner that this is a preliminary question, and that is my purpose.

Examiner Walsh: Let the witness give the testimony from the standpoint of the Bay Area services, and if anything incidental is needed to further that explanation, then he might give it in his own words.

Mr. Gaudio: Will you reframe your question with reference to Bay Area?

Mr. Stowell: I prefer to have it answered as it is.

Examiner Walsh: Then lay a little bit more of a foundation for it.

Q. (By Mr. Stowell): Did you find that the services of Bay Area were unsatisfactory?

A. Yes.

Q. Do you know whether your father ever submitted a letter to the Board respecting such unsatisfactory service of Bay Area, in connection with certain air carriers?

Mr. Gaudio: Just a moment. Here we go [262] again.

I will let the question and answer stand as to Bay Area, but not as to any direct carriers operating service. I will object to that.

We are not here determining the operations of the direct carriers.

Mr. Stowell: Let me put it this way:

Q. (By Mr. Stowell): Have you ever written

(Testimony of Leno Piazza, Jr.)

any correspondence to the Civil Aeronautics Board?

A. Yes.

Q. What did it concern?

A. It concerned American Airlines and a definite contradiction between the air lines and Bay Area, and one thing and another, that rather provoked us into writing that particular letter.

Examiner Walsh: Was that respecting liabilities for shipments? Did it concern loss or damage?

The Witness: No, it had nothing to do with damages to shipments. It was handling an allotment of shipments.

Q. (By Mr. Stowell): Did you discuss in that letter the problem of allocation of space via Bay Area for your shipments?

Mr. Gaudio: Just a moment. I will object to that question as calling for the conclusion of the witness, as to whether Bay Area has any authority to allocate space. [263]

Mr. Stowell: Would you discuss more in detail——

Examiner Walsh: Let us read that question back.

(Question read.)

Examiner Walsh: It is a leading question. Be a little more specific, Mr. Stowell.

Q. (By Mr. Stowell): Will you tell us more in detail the contents of that letter?

Mr. Gaudio: Just a moment. I will object on the same grounds, Mr. Examiner. First of all, it is

(Testimony of Leno Piazza, Jr.)

hearsay as to these Respondents, and we should produce the letter if it is available.

Mr. Stowell: The letter is not available.

Mr. Gaudio: The witness testified that he addressed a letter to the Board.

Mr. Stowell: It is not available in San Francisco.

Mr. Gaudio: Is it available in the office of the Enforcement Attorney?

Mr. Stowell: It is.

Mr. Gaudio: May we have a copy?

Mr. Stowell: You may.

Examiner Walsh: Perhaps we can get a stipulation on that. The Enforcement Attorney will write for a copy.

Mr. Gaudio: And upon such being furnished, it may become a part of the record. [264]

Q. (By Mr. Stowell): Could you tell us why you regarded the service of Bay Area as unsatisfactory?

A. Our shipments were not going through too satisfactorily, and, as I said, this allocation business came up with American Airlines, and there was a definite contradiction between what Reynolds Brothers was telling us, and what American was telling us, in regard to allocation.

One said we would be allocated so many boxes, and that Reynolds, or Bay Area, were allowed so much to reallocate amongst all the shippers. And when I called Reynolds and asked him if that was

(Testimony of Leno Piazza, Jr.)

true, he said, "We know nothing of allocation. We tell them how many boxes we have, and they take them."

So it was working out in an unsatisfactory way for us, because we had gotten three different stories, and our boxes were not going out, so we just got disgusted and dropped them.

Q. What was your attitude at the time you withdrew, about the treatment by Bay Area of your shipments?

Mr. Gaudio: I do not understand the question as to what his attitude was. He either accepted their service, or he rejected it and discontinued using it.

Mr. Stowell: I am going to find out the motive—trying to find out the motive for your withdrawal from the Bay Area service.

Examiner Walsh: We do not have anything on the record, Mr. Stowell, which would indicate whether the dissatisfaction was [265] with the services of Bay Area or American Airlines, and I do not see that there is proper premise for your last question.

Unless the witness can state definitely that there was something about the service of Bay Area, himself, that he found unsatisfactory, I do not see where any evidence that we will get into the record from this witness is going to be of any probative value.

Q. (By Mr. Stowell): You have testified that you found the Bay Area service unsatisfactory?

(Testimony of Leno Piazza, Jr.)

A. Yes.

Q. Could you tell us in what respect?

Mr. Gaudio: Just a moment, Mr. Piazza. I believe the question has been asked and answered.

Examiner Walsh: I think it has. I think your answer was with respect to this allocation of space?

The Witness: That is correct.

Examiner Walsh: You received certain information along one line, from Mr. Reynolds, and you received opposite information from American Airlines?

The Witness: That is correct.

Examiner Walsh: Would that be the extent of your dissatisfaction with the services?

The Witness: That provoked it. At the same time our shipments were not going through in a satisfactory manner, and that [266] just added a little more to it. Actually, Reynolds Brothers was not the main point that we were after at that time, as much as it was American Airlines' unorthodox tactics.

Mr. Gaudio: In short, your entire concern was because of the service of the underlying carrier, American Airlines?

The Witness: That was the main gripe at that time. Of course, one went in hand with the other, the way it seemed to us at that particular time. We were dissatisfied with both of them.

Mr. Stowell: I have no further questions.

Examiner Walsh: Mr. Wolf?

Mr. Wolf: I have one question, Mr. Piazza.

(Testimony of Leno Piazza, Jr.)

Recross-Examination

By Mr. Wolf:

Q. Do you know if Bay Area discriminated against you in the allotment of space on planes?

Mr. Gaudio: Just a moment. I will object to the question. It is irrelevant, incompetent and immaterial, not bounded within the issues of this matter. It assumes a fact not in evidence, that Bay Area has any control over the allocation of space.

Examiner Walsh: I will sustain the objection.

Q. (By Mr. Wolf): Is it your understanding, Mr. Piazza, that Bay Area would reserve space for the shipment each day on some air line?

A. Yes. [267]

Mr. Gaudio: Just a moment. I object to that as calling for the conclusion of the witness, no foundation laid as to with whom such understanding might have been had, under what circumstances.

Examiner Walsh: Will you lay a little more foundation, Mr. Wolf?

Mr. Wolf: Yes.

Q. (By Mr. Wolf): Did Mr. Reynolds tell you at any time that Bay Area reserved its space daily on planes for the consolidated shipment of flowers?

Mr. Gaudio: Just a moment. Mr. Examiner, that has been asked and answered, and he said in so many words, "I have no control"——

Mr. Wolf: This is cross-examination, Mr. Examiner.

(Testimony of Leno Piazza, Jr.)

Examiner Walsh: I will allow the witness to answer.

Mr. Wolf: Will you read the question, please?

(Question read.)

A. In the conversation that I had with him, it was not phrased that way. He said, as I said before, that they called up and received estimates, and they in turn notified the air lines what their boxes would be for that day, that they knew nothing of allocation as far as we were concerned.

Q. Do you know if, when the boxes of flowers from the various shippers arrived at the airport to be put into the space [268] that Bay Area had taken for the day, your boxes received equal treatment with the boxes of other shippers?

A. I cannot—

Mr. Gaudio: I submit he could not answer that question unless he was present.

Mr. Wolf: I asked if he knows.

Examiner Walsh: To the best of your knowledge.

A. I could not say that it did or did not.

Q. (By Mr. Wolf): You do not know?

A. No.

Mr. Wolf: That is all. Thank you.

Examiner Walsh: Do you have another question, Mr. Gaudio?

Q. (By Mr. Gaudio): When you say that your shipments were not getting through, do you mean these particular shipments that you have shown here by these manifests?

(Testimony of Leno Piazza, Jr.)

A. I believe they are included in that.

Q. And in each instance it was a question of space allocation; is that right?

A. I think so.

Q. Have you had any trouble since?

A. Periodically.

Q. But not with Bay Area's service?

A. No. [269]

Q. Do you know via what carrier, that is, what air line? A. What air line?

Q. Since September 9, 1949—

A. Have I had trouble with any air line? Will you repeat the question?

Q. Which air line, if you wish to state for the record, since September 9, 1949, have you now found to be satisfactory?

A. Oh, I have found United very satisfactory in most cases.

Q. Have you ever used Slick?

A. Occasionally.

Q. Flying Tigers? A. Very seldom.

Q. And have you since used American, since September of 1949? A. Yes, we have.

Q. How do you find their service?

A. It has improved.

Q. Has this question of your space allocation, as you refer to it, improved since September of 1949, insofar as your shipments are concerned?

A. There has not been any mention of allocation to me since that time.

(Testimony of Leno Piazza, Jr.)

Q. And there has not been any difficulty, in so far as your shipments are concerned? [270]

A. Oh, there has been difficulty.

Q. No difficulty? A. I said there has.

Q. But not through Bay Area? A. No.

Mr. Gaudio: That is all.

Mr. Stowell: No further questions.

Examiner Walsh: Do you have any more questions, Mr. Wolf?

Mr. Wolf: No.

Examiner Walsh: You may be excused. Thank you.

(Witness excused.) [271]

* * *

WALTER GILLO

was called as a witness for and on behalf of the Enforcement Attorney, and, having been duly sworn, was examined and testified as follows: [272]

Direct Examination

By Mr. Stowell:

Q. Will you give your name to the reporter, please? A. Walter Gillo.

Q. What occupation are you engaged in, Mr. Gillo.

A. Grower and shipper, and wholesale florist.

Q. What business name do you use, Mr. Gillo?

A. Western Wholesale Florists.

Q. Is that a corporation? A. No, it is not.

(Testimony of Walter Gillo.)

Q. Is it a partnership? A. Yes.

Q. Are you now a member of Consolidated Flower Shipments, Inc., Bay Area?

A. Yes, I am.

Q. Do you ship via Airborne? A. Yes.

Q. On what occasions do you ship via Airborne?

A. I would say about 20 per cent of our shipments go out by Airborne.

Q. Do you ship via Airborne on your own initiative, or do you only do so when a customer requests that particular service?

A. If our customer requests it, we ship by Airborne.

Q. Do you receive instructions from your consignee to ship via Bay Area?

A. Quite a few times. [273]

Q. Do you ship to Charles Fudderman of New York City? A. Yes, I do.

Q. Do you ship to Detroit Flower Growers?

A. Yes.

Q. Can you recall from memory the names of the customers who have specifically requested the Bay Area service during a recent period?

A. There has been quite a few of them, from time to time, but I really could not name them off.

Q. Can you tell me if Fudderman has requested the Bay Area service? A. I do not recall.

Q. The Detroit Flower Growers?

A. Yes, they have.

Q. Is Detroit Flower Growers a consignee who receives shipments from you on consignment?

(Testimony of Walter Gillo.)

A. Not all shipments.

Q. On any of them, consignment shipments?

A. Not too many. I would say from 2 to 4 boxes a week.

Q. Are consignment shipments made to the Detroit Flower Growers? A. Yes.

Q. Has he indicated that he would like for you to ship via Bay Area, even with respect to the consignment shipments? A. Yes, he has. [274]

Q. Can you think of the names of any other consignment consignees?

By "consignment consignees" I mean persons who have shipments from you on consignment.

Can you think of the names of any other consignment consignees who have asked you to ship via Bay Area?

A. Well, yes, there is one in St. Louis.

You mean to ship by Airborne?

Q. No, via Bay Area.

A. No, I do not recall of any of them asking me to do that.

Q. You mean, then, that as far as you recall, only the Detroit Flower Growers as a consignment consignee, has requested you to use Bay Area?

A. That is right.

Q. And what type of consignees were the others who requested you to use Bay Area? Were they outright sales by you?

A. Yes, they were outright sales.

Q. Could you describe for us the mechanism of

(Testimony of Walter Gillo.)

a consignment sale as between yourself and the ultimate purchasers?

A. I could not very well explain that.

Q. Let me try to ask you specific questions.

What induces you to ship flowers to the eastern markets on consignment instead of selling them outright?

A. A lot of wholesalers would rather receive stuff on consignment. [275] I do not know what the object of that is. That is why we do not do too much consignment business. We only have one account there that we ship on consignment, and that is the Detroit Flower Growers.

Q. Mr. Gillo, in order to send flowers on consignment to the east coast, do you just pick out the names at random from a directory, or do you know that a certain person will accept your shipments on consignment?

Mr. Gaudio: Mr. Stowell, if we follow his testimony correctly, he has one consignment receiver. Is that right?

The Witness: That is right.

Mr. Gaudio: And he is not on the east coast.

Mr. Stowell: Well, he is east of California.

Mr. Gaudio: Where is your consignment receiver located?

The Witness: Detroit, Michigan.

Mr. Gaudio: That is the only consignment receiver that you have?

The Witness: On Bay Area shipments.

(Testimony of Walter Gillo.)

Mr. Stowell: I would prefer to continue this examination.

Examiner Walsh: As I understood Mr. Gillo, so far as he has indicated, he has only one consignment customer.

Mr. Stowell: That is correct.

The Witness: No, I have not. I have two other ones, but I do not ship by air.

Examiner Walsh: We should have a little bit of foundation [276] for that, then.

Try to get that primary information in, directly, and start from that point.

Q. (By Mr. Stowell): How did you happen to enter into a consignment relationship with this Detroit Flower Growers?

A. At the time when I was shipping to them some items and the prices were too high, and the air freight was too high, and at the time when I started shipping to them, this consignee said that to ship the amount of stuff into that market, I would have to ship them on consignment, and rather than to lose the account, I started shipping to them on consignment.

Q. When you say, "shipping to them on consignment," what do you mean?

I mean, what is the nature of the relationship between you and this Detroit Flower Growers, insofar as consignment sale is concerned? I mean, tell us the mechanics of what happens.

A. I am not very familiar with the consignment business, because we do not do too much of it.

(Testimony of Walter Gillo.)

We will make maybe three to four shipments a week to them, and if we do ship them 20 or 30 dozen gardenias on consignment, it depends on how the market is, and what the price is, and what the gardenias are sold at.

Q. Do you ship on consignment prepaid freight?

A. I do not think we do. [277]

Q. Have you ever shipped prepaid freight on your consignment shipments?

A. Maybe some of them did go out prepaid.

Q. How about this Detroit Flower Growers, do you ship to him on consignment, prepaid or collect?

A. Collect.

Q. Do you know what happens at the other end, after you have tendered flowers to some carrier, and it arrives at Detroit, and it is a consignment shipment, could you tell me what happens?

And by that I mean, does he pay the freight, or what type of money passes hands?

A. He pays the air freight on that.

Q. And the Consolidation charges?

A. Yes.

Q. To whom does he pay that, if you know?

A. Well, I really would not know that.

Q. Then what happens? What happens with the flowers?

A. He accepts the shipments, and whatever it is, he will probably sell that on consignment. If it is 20 dozen gardenias, he will sell that on consignment, at whatever the market price is.

(Testimony of Walter Gillo.)

Q. You say he will sell your flowers on consignment. Do you mean to possibly other retail stores in that area, if you know?

A. Yes. Well, I do not know who he sells them to, but it [278] is just a wholesaler, and he evidently must sell them to retail stores.

Q. As far as you are concerned, though, as soon as he accepts your flowers, he has undertaken to try to sell them for you on a commission basis?

A. That is it.

Q. What happens if he sells some of those flowers outright to some retail store?

How do you know about it?

A. We have a report coming in every week, and it gives us a report on how much he sells gardenias for, and how much they lost. We can probably send them about 15 dozen of gardenias, and they can sell about 12 dozen, and will lose 3 dozen.

Q. By "lose," what do you mean?

A. They are damaged, or they do not sell them in time and they turn brown.

Q. The report which he sends you, is that limited just to sales which he has made outright to retailers? A. Yes.

Q. And then what happens? Does he transmit the money to you?

A. When the report comes in, the first of each week, we get a check that shows the air freight, and the commission that the wholesaler gets, and if there is any gardenias that are left over from the previous week, it goes out the following week. [279]

(Testimony of Walter Gillo.)

Q. Does this Detroit Flowers Growers take its commission on the total amount, and by "total amount," I mean your invoice plus the freight; or does he just take—well, could you tell us just how the percentage is calculated, the commission?

A. If a shipment of gardenias amounted to \$25 or \$50, that is the selling price.

Q. It is not your price which you suggest to him?

A. Oh, no.

Q. Have you ever suggested a selling price to him?

A. Never did.

Q. Have you ever indicated that he must not sell these flowers in any event at less than a certain figure?

A. I never did.

Q. Will you continue, please, on the mechanics of the percentage?

A. Well, if there is 25 or 30 dozen of gardenias, and they amounted up to \$50 or \$100, they would deduct 25 per cent of what they sold the stock for, and then we would deduct the air freight.

Q. And by "air freight" you mean other charges which he may have paid when he received such consolidation and pickup, and so forth?

A. That is right.

Q. Now, let us assume that at the end of the week he has sold your flowers, half of them outright, and half of them on [280] consignment. How would the report read to you at the end of that week?

A. I do not get that question.

Q. Suppose you shipped him 100 flowers, and

(Testimony of Walter Gillo.)

at the end of the week, he has sold 50 outright to retail stores, and he has sold 50 on consignment. You get a report, you have testified, at the end of every week; is that correct? A. Yes.

Q. Would that report read, "100 flowers sold," or "50 flowers sold"?

A. It would show 50 flowers sold, and the balance of the 50 would go on the next week's report.

Q. Until such time as he made an outright sale of the balance of the 50 flowers?

A. That is it.

Q. What happens if he is not able to sell outright the balance of those 50 flowers?

A. On the report that we get back, it shows the amount of so many flowers damaged that should not be sold.

Q. What happens on a consignment shipment if he refuses to accept it? Suppose the market is glutted and he does not feel he can sell the flowers, and he does not want it.

A. I have never had any shipments on consignment refused.

Q. Are you acquainted with the general selling practices in the flower industry? [281]

Mr. Gaudio: Where?

Mr. Stowell: In the San Francisco area.

A. Yes, I am.

Q. (By Mr. Stowell): Will you give us your opinion as to what the rough proportion would be of flowers sold on consignment, and flowers sold outright, if you know?

(Testimony of Walter Gillo.)

Mr. Gaudio: Just a moment. I submit it calls for his conclusion.

Mr. Stowell: It does, and I am trying to qualify him as a person who——

Mr. Gaudio: That is not the proper form of qualification, as far as any foundation is concerned. This witness said he handles few consignment sales, so obviously he would not be an authority on that question.

Q. (By Mr. Stowell): How many years have you been in the flower business, Mr. Gillo?

A. I have been in the flower business since '41.

Q. In San Francisco or elsewhere?

A. I was in San Francisco, and I moved down to San Mateo. That was in '42.

Q. Are you a member of the national association of flower people? A. Yes, I am. [282]

Q. Do you have direct contacts with flower growers in this area? A. Yes, I have.

Q. About how many contacts would you say that you have had during the last 10 years?

A. With all the growers?

Q. Yes. Have you at least had a contact with almost every grower in this area at one time or another? A. Yes, I have.

Q. Have you had many discussions with them about problems of selling flowers east of California?

A. Quite a bit.

Q. Have they discussed with you the problems of selling flowers on consignment, as against selling them outright?

(Testimony of Walter Gillo.)

A. No, I never did talk about that.

Q. Has the situation of selling flowers, either on consignment or outright, ever been discussed at any meetings that you have attended with other flower growers?

A. Well, I do not think I have ever attended any meetings with any other growers.

Mr. Stowell: No further questions.

Examiner Walsh: Your objection is sustained, impliedly.

Mr. Gaudio: Thank you, Mr. Examiner.

Examiner Walsh: Cross-examination, Mr. [283] Gaudio.

Cross-Examination

By Mr. Gaudio:

Q. In the event of the failure of your receiver to sell these flowers that were taken by him on consignment, there is a loss at both ends, is there not?

He does not make any money, and you do not make any money? A. Quite a few times.

Q. However, he charges you, none-the-less, for the cost of transportation that he had to pay in receiving those flowers, does he not? A. Yes.

Mr. Stowell: Mr. Examiner, I believe he has testified that he never had a situation like that, and therefore I object on the ground that he would have no knowledge, no personal knowledge as to what might happen. It is a speculative situation, and I do not see how this witness could possibly answer a speculative question which he has never had any experience with.

(Testimony of Walter Gillo.)

Examiner Walsh: Let us have the question read back.

(Question read.)

Examiner Walsh: And the previous answer was that at times you lost money on those consignment transactions?

The Witness: Yes.

Examiner Walsh: I think the question is proper. He may answer.

Q. (By Mr. Gaudio): And that deduction is taken on a subsequent report [284] where he might have made the sale. In other words, later on, if he makes a sale of flowers received by him on consignment, then he takes the transportation for the loss or damaged flowers that might have been sustained at an earlier period from the proceeds of a subsequent sale; is that the general practice?

A. Well, I have not got too much experience on consignment business, because we do not do too much of it, and like I say, there is only this one account that we ship three to four boxes a week, and I know for a fact, of all the consignment business we ever do, we always lose money, and I never keep much interest in that.

Q. I believe you testified earlier that these reports show what proportion of the particular shipment could not be sold by him, and might have been dumped; is that right? A. Yes.

Q. And to that extent the transportation costs for those flowers is taken from a subsequent sale?

(Testimony of Walter Gillo.)

A. Yes.

Q. And charged to your account?

A. That is right.

Q. You were one of the original members of Bay Area? A. Yes, I am.

Q. Are you generally familiar with the purposes and the reasons for its organization?

A. Well, not too much. [285]

Q. As a member of Bay Area, and as a grower of flowers, particularly, is it of any interest to you as a shipper and member to be apprised from time to time of market conditions and growing conditions in the eastern markets? A. It is.

Q. Is your business particularly affected by the weather conditions in the eastern markets?

A. At certain times.

Q. Has it ever occurred in your experience as to your particular flowers, that the lack of a market, because of extreme weather conditions in the eastern markets might have advanced your business here on the West Coast? A. It could have.

Q. In that respect are you particularly interested in weather conditions as reflected by weather reports, or what is commonly know as a florists' weather report, insofar as the east is concerned?

A. Yes.

Q. Do you know anything about traffic matters, that is, insofar as service and rates applicable to air carriers, are concerned?

A. No, I have had very little experience on that. The office takes care of all that.

(Testimony of Walter Gillo.)

Q. And in so doing, do you utilize the service of Bay Area to apprise your firm of available rates via air carriers? [286] A. I do.

Q. Your membership is in good standing by the payment of dues in Bay Area; is that correct?

A. Yes.

Mr. Gaudio: No further questions.

Examiner Walsh: Mr. Wolf.

Q. (By Mr. Wolf): Mr. Gillo, the last answer you made on direct examination was that you did not attend meetings of flower growers. Do you recall that answer? A. Yes.

Q. Does that mean that you do not attend the meetings of Bay Area membership?

A. I never did, but I have had one of the employees attend the meetings.

Q. I see. I gather from your testimony, Mr. Gillo, that you do not like the consignment business; is that correct? A. No, I do not.

Q. You never can tell what you are going to get for your merchandise, can you? A. That is it.

Q. If all of your buyers requested that you use Airborne to ship, would you do so?

A. The buyers? You mean the——

Q. Consignees, yes. [287]

A. Well, yes, I would.

Mr. Wolf: No further questions.

Examiner Walsh: Redirect, Mr. Stowell?

(Testimony of Walter Gillo.)

Redirect Examination

By Mr. Stowell:

Q. In your dealings with the Detroit Flower Growers, in connection with these consignment shipments, has it ever occurred that one week would go by and they would report no outright sale of flowers?

A. We would get a report back that would show what amounts they would sell, and they would wire us either to stop shipping—

Q. Would you get a check every single week?

A. Yes.

Mr. Stowell: No further questions.

Examiner Walsh: Mr. Gaudio.

Recross-Examination

By Mr. Gaudio:

Q. Mr. Gillo, I believe you testified earlier that only 20 per cent of your shipments, approximately, are routed via airborne service. Do I take it from that, that the balance, insofar as air shipments are concerned, goes by Bay Area? A. Yes.

Q. Does that mean that these requests for shipments have predominated in favor of Bay Area, or do you, on your own initiative, select and direct your shipments by Bay Area? [288]

A. We direct quite a few by Bay Area, and a lot of consignees demand us to ship by Bay Area.

(Testimony of Walter Gillo.)

Q. Would you say that the vast majority of your consignees request service through Bay Area?

A. Yes.

Q. Has it ever occurred in your experience that all of your consignees have requested—ever requested your using Airborne service?

A. No, they have not.

Q. This marked disproportion between the Bay Area traffic and that handled via Airborne, is that because of any complaint as to the Airborne service?

A. I did not hear the whole question.

Q. This disproportion between the shipments handled by Bay Area and Airborne, is that because of any complaint the receivers had regarding Airborne service and rates?

A. Well, a lot of them were on account of the rates. A lot of the consignees were complaining that the rates were too high, and by talking to a lot of the consignees over the telephone, I suggested to them to try Bay Area. And by doing so, we would find that the rates would be from \$1.00 to \$1.50 a box cheaper through Bay Area.

Q. Is the consignee's concern in that particular because of the local competition which he has to meet as affected by the delivered cost to him of the merchandise? [289]

A. It is.

Mr. Gaudio: No further questions.

Examiner Walsh: Mr. Wolf?

Mr. Wolf: No questions.

Mr. Stowell: No questions.

Examiner Walsh: You may be excused.
Thank you, Mr. Gillo.

(Witness excused.)

Mr. Stowell: I would like to call Mr. Zappettini for a very few questions.

Whereupon,

WILLIAM ZAPPETTINI

was called as a witness for and on behalf of the Enforcement Attorney, and, having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Stowell:

Q. Will you give your full name to the reporter, please? A. William Zappettini.

Q. What is your occupation, Mr. Zappettini?

A. Wholesale florist.

Q. Would you tell us in what cities you have places of business?

A. San Francisco, Los Angeles, Dallas and Fort Worth, Texas. [290]

Q. Are you one of the largest flower wholesalers in the United States?

A. Well, I would not say the largest.

Q. One of the largest?

A. One of the wholesalers in the United States.

Q. How many years have you been in the flower business, Mr. Zappettini? A. Since 1921.

Q. And since 1921, you have attended many association meetings of flower growers?

(Testimony of William Zappettini.)

A. I did.

Q. Have you ever been an officer of a national flower association?

A. Not an officer. Well, pertaining over large administration?

Q. Yes. A. No.

Q. Do you have a good knowledge of the flower selling industry, the marketing? A. I do.

Q. In such knowledge, Mr. Zappettini, would you say that a large number of flower shipments are sold on consignment to people east of California?

A. You refer to the methods, selling flowers?

Q. Yes, methods of selling from this area. [291]

A. From California will be about 50 per cent. Some wholesalers have more, and some wholesalers have less, because it is hard for me to determine the average. Some of the wholesale firms do sell out all their production on consignment basis, and some sell them on outright basis, so therefore I do not know whether my figure of 50 per cent is correct or not.

Q. But nevertheless, it is a very important way of selling flowers? A. Yes, that is right.

Q. And if you were to eliminate consignment selling in the flower industry, would it be your opinion that the marketing of flowers might be seriously affected?

A. Well, let us take a moment to let me decide that. Although the method has been used by our people, it seems that the consignment of flowers—

(Testimony of William Zappettini.)

direct sales are more satisfactory to keep an eye over the wholesaler.

Q. Do you sell flowers on consignment, Mr. Zappettini?

A. Very small amounts, very small proportion of our sales are made on consignment basis.

Q. Are there any other methods of selling in the flower industry, in addition to selling flowers on consignment and by outright sale?

A. Not that I know of.

Mr. Stowell: No further questions.

Examiner Walsh: Cross-examination, Mr. [292] Gaudio.

Mr. Gaudio: With due respect to Mr. Zappettini, Mr. Examiner, I would like to defer cross-examination. We will go more into his operations on direct examination by Respondents.

Examiner Walsh: Mr. Wolf.

Mr. Wolf: No questions.

Mr. Stowell: Thank you, Mr. Zappettini.

Examiner Walsh: You are excused. Thank you.

(Witness excused.)

Mr. Gaudio: Mr. Examiner, before we adjourn, there is one element of Mr. Gillo's testimony that I would like to clarify, and I would like to recall him very briefly.

Whereupon,

WALTER GILLO

recalled as a witness for and on behalf of the Enforcement Attorney, having been previously sworn, was examined and testified further as follows:

Further Cross-Examination

By Mr. Gaudio:

Q. Mr. Gillo, you testified earlier that you have used the services of Airborne, is that correct?

A. Yes.

Q. And in that connection, has Airborne ever refused any of your shipments?

A. You mean pickup delivery?

Q. Pick up your shipments for air transportation. Have [293] they ever refused to do that?

A. No, never did.

Q. That did not occur during the last Christmas season? A. No, it did not.

Mr. Gaudio: That is all.

Mr. Wolf: No questions.

Examiner Walsh: That is all. You are excused. Thank you.

(Witness excused.)

Mr. Stowell: If the Examiner cares to continue, I would like to call Mr. Bonaccorsi for a very few questions.

Whereupon,

JAMES F. BONACCORSI

was called as a witness for and on behalf of the Enforcement Attorney, and, having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Stowell:

Q. Will you give your full name, please?

A. James F. Bonaccorsi.

Q. What is your business, Mr. Bonaccorsi?

A. Golden Gate Wholesale Florists, Inc.

Q. Are you a member of the Bay Area Association?

A. Yes, the company is.

Q. Do you ship via Airborne?

A. Occasionally we do, yes. [294]

Q. What motivates you to ship by Airborne on those particular occasions?

A. Most of the accounts request Airborne service. The shipments they are receiving, most of the accounts request Airborne service.

Q. Do you receive many requests from consignees to ship via Bay Area?

A. No, I do not.

Q. You mean that all the shipments which you make via Bay Area are at your own instance and initiative?

A. We have a person in our office whose job is to try to land the flowers as cheaply as possible to the consignee, and therefore we have found that Bay Area naturally is cheaper, so we route them

(Testimony of James F. Bonaccorsi.)

through there. If they are not satisfied, we ship them the way they want.

Q. Have you ever received any requests at all from customers east of California to ship via Bay Area, that you can remember?

A. We may have had one or so, but that is about the extent, as far as my company is concerned.

Q. Do you ship on consignment, Mr. Bonaccorsi?

A. Yes, we do.

Q. More than half of your business is consignment?
A. Last year it was, yes.

Q. Who is Ed Cereghino? [295]

A. Ed Cereghino is a representative of the Golden Gate Wholesale, Inc., the eastern representative, I might add.

Q. Does he work exclusively for you?

A. No, he does not.

Q. Do you know the names of the other persons for whom he performs service?

A. Yes, he performs services for Buford Hall in Los Angeles, and I believe he sells prepared eucalyptus for Floral Service, here in the Bay Area. He may have some gladiola growers in Florida, that I am not sure of.

Q. Mr. Bonaccorsi, in your dealings with Mr. Cereghino, have you ever given him any sales material for advertising, circulars, or literature?

A. We have. Very little.

Q. Did any of that literature mention the Bay Area service?
A. Not to my knowledge.

(Testimony of James F. Bonaccorsi.)

Q. Have you ever told Mr. Cereghino that he should mention the Bay Area service as a selling point in selling flowers on your behalf?

A. No. The only thing I told Mr. Cereghino—in fact, I did not have to tell him, he knew, himself, already, that shipping by Consolidation would save the ultimate consignee some money. There was no need for me to tell him that. He knew that.

Q. Insofar as your consignment shipments were concerned, [296] do you know whether or not he had that same knowledge?

A. I presume so, if he had the knowledge. He understands Consolidation prior to the time that we applied for his services, as he had been working on this before, as far as his personal end of it, with a carrier, attempting to do such a thing before this organization came into being.

Q. Do you have any knowledge as to whether he has mentioned Bay Area to potential accounts on the east coast while trying to sell flowers for you?

A. That I would not know.

Q. Has he ever mentioned to you that he has mentioned the name of Bay Area in trying to drum up business for you?

A. Not to my knowledge.

Q. Have you ever corresponded with Mr. Cereghino?

A. Most of the correspondence is handled by Mr. Curt Lyon.

Q. Is he an employee of yours?

(Testimony of James F. Bonaccorsi.)

A. He is an employee of mine, and he is called the Sales Manager of our organization. He is the man that does all the corresponding back and forth daily, with Mr. Cereghino, our eastern representative.

Q. Have you ever examined any of the correspondence between—

A. Most all the correspondence is examined by me afterwards. In other words, the copies of the letters are put on my [297] desk, and I usually look at them a day or two later. There are perhaps some that have escaped me, no doubt.

Q. Do you also examine the incoming correspondence from Mr. Cereghino?

A. Most of them, yes.

Q. To your knowledge, has he ever mentioned Bay Area in any of that correspondence?

A. Oh, no doubt he did mention Bay Area. Just how he mentioned it, I would not know at this particular time.

Q. Have you ever tried to secure the services of a break bulk agent in Philadelphia to perform break bulk service for flowers shipped by you and other shippers in this area?

A. An occasion has arisen in Philadelphia. Our service was very poor, and it came to my attention that there was a trucker who could perform the service, or better service. Cereghino being on the east coast, he was authorized—in other words, it was brought up at one of the Board meetings that he could be authorized to contact

(Testimony of James F. Bonaccorsi.)

this particular trucking company in behalf of the Association, but he was authorized by the Board members to do so.

I think that is perhaps what you are trying to bring out.

Q. And of your knowledge, did Mr. Cereghino contact this particular trucker?

A. As far as I know, he did, yes.

Q. Is this trucker now accepting Bay Area shipments? [298]

A. I do not think so.

Q. Has the Association made any payments to Mr. Cereghino for this service?

A. Not as yet.

Q. But you contemplate receiving an invoice?

A. Any expense that he might have incurred, I am sure that the Association would stand behind us, since they authorized us to act in their behalf.

Q. Does Mr. Cereghino sell flowers for you in Philadelphia?

A. Yes, he does. That is his territory.

Q. In what other cities besides Philadelphia?

A. I think I will take back what I said a little earlier. There is New York state, Pennsylvania—the east coast, in other words, that will simplify it.

Q. Did Mr. Cereghino mention to you how this information came to him that this trucker might be interested in accepting Bay Area Consolidations for break bulk?

A. I think you will have to ask that question again. I did not quite get the first part of your question.

(Testimony of James F. Bonaccorsi.)

Q. You testified that it came to your attention via Mr. Cereghino——

A. I must retract that. No.

Q. I am sorry.

A. I do not remember saying that. [299]

Q. How did it come to your attention that this trucker in Philadelphia might be available for Bay Area's shipments?

A. We just assumed that he was available. He is in the trucking business. He must be a common carrier. I do not think he is reserved to do business for just an exclusive group, as far as my knowledge is concerned. He is registered with the I.C.C. He must therefore be approved to perform services.

Q. Did any suggestions come from Mr. Cereghino about the potential trucks available in Philadelphia by this trucker?

A. I think you better ask that again, please.

Mr. Stowell: Would you read that question, Mr. Reporter?

(Question read.)

A. I would say no to that.

Mr. Stowell: No further questions.

Examiner Walsh: Cross-Examination, Mr. Gaudio?

Mr. Gaudio: No, I will reserve examination until a later point.

Mr. Wolf: I have a few questions.

Examiner Walsh: Mr. Wolf.

(Testimony of James F. Bonaccorsi.)

Cross-Examination

By Mr. Wolf:

Q. Have you met Mr. Cereghino, Mr. Bonaccorsi? A. Have I met him? Yes.

Q. Do you know of your own knowledge that he has solicited business for Bay Area? [300]

A. I said no.

Q. You do not know?

A. That is right, I do not know.

Q. You have stated that the Board of Directors has asked Mr. Cereghino to call on this trucker?

A. That is correct. The Board of Directors of Bay Area.

Q. Of Bay Area? A. That is correct.

Q. Are you a member of the Board?

A. Yes, I am.

Q. That was done by letter?

A. It must have been done by letter, because it could not have been done any other way, unless it was by telephone. I would say it was handled by letter, but I am not positive.

Q. Do you think the letter could be produced?

A. If there is such a letter existing, I would say yes. In fact, if I may add, I think that I was instructed to write Mr. Cereghino to that effect, now that I come to think about it, and I can produce something to that effect, I am sure, if it is necessary.

Q. You wrote the letter?

(Testimony of James F. Bonaccorsi.)

A. No, I did not. Mr. Lyon, our Sales Manager, I told him what to write.

Mr. Wolf: I see. Thank you. That is all.

Mr. Stowell: I have just one question. [301]

Redirect Examination

By Mr. Stowell:

Q. Mr. Bonaccorsi, do you know that Mr. Cereghino uses Bay Area as a talking point in selling flowers?

A. He has not been instructed by me to do so. If he has done it on his own, I could not possibly know.

Q. But do you actually know whether he does?

A. Talk about Bay Area? How can I know? He has not been instructed by me, so how do I know?

Q. Just give us a yes or no answer. Do you know of your own knowledge whether, in selling your flowers, he mentions Bay Area?

A. No, I do not know.

Mr. Stowell: No further questions.

Examiner Walsh: You may be excused. Thank you.

(Witness excused.) [302]

* * *

JOHN C. BARULICH

was called as a witness for and on behalf of the Enforcement Attorney, and having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Stowell: [303]

* * *

Q. Let us take Kansas City. Assume that Mr. Bonaccorsi has some boxes which he wants shipped to Kansas City on a consolidation, but it so happens that at the end of the day you have not collected a single additional box going to Kansas City.

What would your procedure be?

A. If it is a lone box destined to Kansas City for break bulk, we reserve the right, or are empowered with the right to take that box to the next consolidation point and transfer it there.

Now, in many instances, a lone box to Kansas City might finally become part of a St. Louis consolidation, and railed or sent by air, whatever the case may be, out of St. Louis, as a break bulk point.

Q. Suppose it is not possible. Suppose that there is no nearby break bulk point where you could form this new consolidation ultimately going to Kansas City. Then what?

A. In that type of a case, if we knew during the course of the day, or when they called in the morning, and they had one box for Kansas City, and we knew we had no other boxes, we would inform him that it was a single box, or a lone box,

(Testimony of John C. Barulich.)

and he would then tell us, or give us instructions as to what should be done, and in many cases, they just say, "Well, go ahead and make a straight shipment of it."

Q. Suppose you are requested to pick up a box for a straight shipment destined to a certain point, and you discuss [330] that, in fact you have many boxes going to that point, and the box requested would fit in very beautifully for consolidation.

Do you advise the shipper that you recommend that that box be consolidated?

A. We never had that occasion arise, although we respect the shipper's wishes, because there are many hidden factors that become part of this shipping. We do not know what his arrangement is with the ultimate receiver. It may be a point that a passenger carrier services, and a freight carrier does not. A consolidation may be moved via a freight carrier, and he is landing in a field 20 miles away from this particular customer. There are many reasons for it.

We just do not arbitrarily consolidate it. If it comes in on a manifest with no indication for straight movement, that is word to us to consolidate it the best way available.

Q. Now, let us assume again that Mr. Bonacorsi has boxes both for straight shipments, and for consolidated shipments. Your driver picks up the boxes, and how does he place them in the vehicle?

(Testimony of John C. Barulich.)

A. That is discretion. For example, he is liable for the load, and usually in our particular type of operation, the driver has to load the complete truck. He will try to load the truck in accordance with the off-load by carrier. By that I mean United Air Transport's straight shipments, and Consolidated shipments might be within an allocated space [331] within the vehicle, and the same goes for Tiger and Slick and American, TWA, whatever the case might be.

Q. Then the method of placing in the vehicle is designed to facilitate off-loading, but does it have any relationship to whether the particular box is a straight shipment box, or a consolidated box?

A. No differentiation between them, if that is what you mean. None at all.

Q. What happens as your truck driver approaches your operations office? Does he stop to pick up further papers in connection with those boxes?

A. He comes to the office at the field, brings all the paper work, regardless of straight shipments or consolidated shipments, into the office, and there is personnel there that either prepare the air lines billing, or by that time they have made up air bills, so that when the load is off-loaded at the carrier, the billing is with the merchandise so that the movement can be expedited.

Incidentally, I failed to make one point clear, there, that you should know, that the type of mer-

(Testimony of John C. Barulich.)

chandise being shipped is taken into consideration in consolidations, and so forth.

As an example, take the life of a type of flower, roses. If we did not have a consolidation into Detroit, we would not arbitrarily take a rose shipment to Chicago and rail it up.

We would pay the higher rate for service. [332]

* * *

VIRGINIA C. DECIA

was called as a witness for and on behalf of the Enforcement Attorney, and, having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Stowell:

Q. Mrs. Decia, would you please give your full name to the reporter?

A. Virginia C. Decia.

Q. What business are you in, Mrs. Decia?

A. In the wholesale flower business.

Q. What is the name under which you do business?

A. California Floral Company, at Redwood City.

Q. Mrs. Decia, do you ship by air?

A. Yes, we do.

Q. How long have you shipped by air?

A. I believe since they started to ship by air, we shipped either by Airborne or by Bay Area.

(Testimony of Virginia C. Decia.)

Q. Would you say that your first air shipment was made in 1947? [335]

A. Thereabouts, yes.

Q. Can you recall how you shipped by air, by what air carrier?

Mr. Gaudio: In 1947?

Mr. Stowell: Yes.

The Witness: By Airborne, I believe the first shipments were made. Yes, definitely Airborne.

Q. (By Mr. Stowell): Did you ship by Airborne throughout 1947?

A. I am not exactly sure of the date, but it was about that time when Consolidated was instigated, the beginning of the organization.

Q. Did you ship by air in 1948?

A. Yes, we have shipped by air ever since.

Q. Have you ever shipped over any other service than Airborne? A. Yes.

Q. Can you tell us the circumstances which led you to ship via this service other than Airborne?

Mr. Gaudio: I am assuming that when she did not ship via Airborne, she went Bay Area.

Mr. Stowell: Is that correct, did you ship via Bay Area?

The Witness: Bay Area was not organized at the time.

Q. (By Mr. Stowell): Did you have anything to do with the organization of [336] Bay Area?

A. Yes.

Q. Would you tell us the circumstances, insofar

(Testimony of Virginia C. Decia.)

as they involved your participation in the organization of Bay Area?

A. Well, it was more or less of a thought that was gotten up through Mr. Decia, myself and Clyde Reynolds, and several of the other shippers, to start a consolidation shipment. He was to see if we could save money in working with the airlines, which they were very willing to help.

We thought of starting another organization, which would probably save possibly more money to our consignees, definitely not ourselves, because it was to be a non-profitable organization.

Q. Do you ship on consignment, Mrs. Decia?

A. No, we do not.

Q. Mrs. Decia, I show you a document which has previously been marked as EA-318, and ask you if you recognize it?

A. Yes, this was a document that was made out at the beginning of the other organization.

Q. Can you tell me if the original document differed in any material respect from this carbon?

A. There is another original document. I do not have it. The files were turned over after I resigned from the organization.

Q. Is it your testimony that the original of this [337] document should be in the possession of John C. Barulich? A. That is correct.

I have a letter to prove that he picked up the papers on April 12, 1951, and I resigned from the organization on April 19, 1950.

(Testimony of Virginia C. Decia.)

Mr. Gaudio: Mr. Stowell, do you want to have that last statement corrected to indicate that she has Mr. Barulich's signature on a written demand for all of the documents, records, and other papers belonging to the Bay Area, but that the particular letter in question is not specifically mentioned, nor is it mentioned in the receipt?

The Witness: May I make a correction there?

Mr. Gaudio: Just a moment, Mrs. Decia.

Mr. Stowell: I will ask you the question.

Examiner Walsh: Put the questions one at a time, and they will be answered one at a time.

Now, who was speaking last?

Mr. Stowell: I will put the question to her, Mr. Examiner.

Mr. Gaudio: The question was, Mr. Examiner, with respect to the letter, and the answer given was that yes, the original document was delivered to Mr. Barulich, and "I have his receipt for it," but on production of the so-called receipt, it is merely a signed receipt that the above documents were received, but there is no listing of the documents delivered. [338]

Q. (By Mr. Stowell): Mrs. Decia, do you know that the original of the document referred to as EA-318 was in the papers which you turned over to Mr. Barulich? A. Definitely so.

Mr. Gaudio: Just a moment. I submit that is self-serving. It would not be binding as against Mr. Barulich.

(Testimony of Virginia C. Decia.)

Examiner Walsh: I think we can accept it as a statement of what Mrs. Decia actually had, not as to the question of whether it was turned over to Mr. Barulich's possession. That is another matter.

As I read this letter, it requests any and all files, documents, minutes, etc., pertaining to the business of Consolidated Flower Shipments, Inc.-Bay Area, and consignor Consolidated Flower Shipments, Inc. Your receipt is at the bottom. I must assume that the receipt portion of the document would be all-inclusive of any of the official records and documents of these two organizations; and it would appear, therefore, that such document in all probability was included in those files.

There is a presumption that such document was turned over to Mr. Barulich, and that presumption stands.

Q. (By Mr. Stowell): Mrs. Decia, if I read you a list of names, could you indicate to me whether each name appeared on the original of this document?

A. The original of that document was much longer. It [339] was written on legal paper, because it involved 25 or 30 signatures on it. The names appeared on separate paper. There were three copies. The name was here, the signature of the company there, and there were two places taken, because the name and the party that was given authority to sign with the name of the company, with an address over on this side.

(Testimony of Virginia C. Decia.)

Mr. Gaudio: Is it your testimony that this is not an exact duplicate of the original?

The Witness: There is no signature on that.

Mr. Gaudio: I mean in context and size.

The Witness: No, it was a legal paper.

Mr. Gaudio: This is smaller than the one you are referring to?

The Witness: That is a regular 8 by 12½.

Q. (By Mr. Stowell): Other than the size of the paper and the arrangement of the lines, have you noticed anything here on EA-318 which differs from the original which was actually either mailed or delivered to the addresses?

A. No, I would not know that definitely. As I say, my complete file has been turned over.

Q. Can you recall to whom the original of this document was delivered?

A. One copy, Clyde Reynolds had, one copy I had, and I believe one copy Truce, the attorney, had. [340]

Q. Were the air lines in any way involved in the receipt of this document?

A. No, a copy was sent to the different trucking lines.

Q. If I were to read you the names of certain firms, could you recognize whether that firm or person signed the original of this document?

A. It has been quite a long time, but I could tell you more or less, yes.

Q. Mr. R. J. Adachi?

(Testimony of Virginia C. Decia.)

A. That I cannot swear to. If so, it was quite a considerable time afterwards. I can remember the original one.

Mr. Stowell: May we go off the record a moment, Mr. Examiner?

Examiner Walsh: Off the record.

(Discussion off the record.)

Examiner Walsh: On the record.

Q. (By Mr. Stowell): Will you continue please, with the earlier discussion. What happened after you and some other shippers decided that perhaps a group should be formed to consolidated shipments?

What concrete action did you take, to put that idea into effect?

A. Well, some of the air lines just merely helped. We contacted trucking lines throughout the United States, with the help of Highway Transport in some cases, and Clyde Reynolds [341] rented a place at the airport, and had a man by the name of—I forget the name.

Q. Was it Tal Lloyd?

A. Tal Lloyd in the office, who did the detail work. We went ahead and bought manifests through Sunset McKee. We were operating that way, and at some time along the line, which might have been eight or nine months, Mr. Barulich stepped into the picture, and we were operating very successfully. I believe it is, now, for that matter.

However, I did not see fit to use it, and got out.

(Testimony of Virginia C. Decia.)

In this particular file, there is a list of all the trucking companies.

Q. Mrs. Decia, what office did you occupy with the group? A. Secretary-Treasurer.

Q. For how long?

A. Oh, I could not be exact about that. It might be 11, 12 months or so, I resigned on April 19, of 1950.

Q. In your knowledge, while you were Secretary-Treasurer, was the policy of the Association to accept as a member any responsible flower grower or shipper?

A. Yes, the organization was open to anyone. There was no restriction.

Q. In your knowledge, was anyone's application for membership refused?

A. Never, as long as I was in the [342] organization.

Q. Were there any requirements of dues in order to become a member of the Bay Area group during your administration?

A. Not during my administration.

Q. Were payments made to the Association Treasurer in December, 1949, by exclusively flower persons?

A. I do not understand what you mean by that.

Q. Who paid the expenses of incorporation of Bay Area?

Mr. Gaudio: Just a moment. That calls for the conclusion of the witness, that at the time in question there were any expenses of Bay Area.

(Testimony of Virginia C. Decia.)

Q. (By Mr. Stowell): Were any expenses incurred for the incorporation of Bay Area?

A. Yes, the incorporation papers.

Q. Do you know who paid for those expenses?

A. If I remember correctly, one-half was paid by Clyde Reynolds, and the other half was prorated among the members. If I remember correctly, I am not positive of it.

That is also in the files.

Q. In your knowledge, Mrs. Decia, did you sell flowers to many of the same outlets on the east coast, as the other members of the association?

Mr. Gaudio: If she knows.

Mr. Stowell: I said, "in your knowledge."

The Witness: We all ship practically the same accounts, [343] at one time or another.

Q. Would it be fair to say that the members of Bay Area group competed with each other for the flower market east of California?

Mr. Gaudio: Just a moment. That is objectionable, Mr. Examiner, as calling for her conclusion, except as to California Floral Company.

Q. (By Mr. Stowell): Are you acquainted with the flower growers and shippers in the California area? A. I think I am, for twenty years.

Q. Do you know the type of merchandise the flower growers and shippers have available?

A. That is right.

Q. Do you know where they seek outlets for their products?

(Testimony of Virginia C. Decia.)

A. Eastern markets, naturally.

Q. Do you seek an outlet in the eastern markets?

A. I do.

Q. In your opinion, did you consider the other members of the association competitors for those eastern markets?

Mr. Gaudio: You are speaking now of the California Floral Company?

Mr. Stowell: Yes.

Q. Did you consider yourself, and by "yourself," I mean the California Floral Company?

The Witness: Well, any man that is in the flower business [344] is a competitor of yours.

Q. But insofar as these eastern markets were concerned?

Mr. Gaudio: I submit that calls for a conclusion.

There is no foundation that insofar as she shipped to the east, to Pittsburgh, Miami, St. Louis, Kansas City and any of the others, at the same time and while she had a market available, they shipped to those same points, and it calls for a conclusion that they are in any extent competitive.

Mr. Stowell: Mr. Examiner, I asked her very specifically.

It seems to me I have laid a sufficient foundation.

Examiner Walsh: She can give an answer whether she considers she had competition, particularly as to certain consignees, at various eastern points. That is something that I think a person may be presumed to have knowledge of.

(Testimony of Virginia C. Decia.)

The Witness: Are you speaking of an outright sale, or consignment, as being in competition?

Q. (By Mr. Stowell): I merely mean whether the products which you had for sale during the period of your administration, whether in seeking markets for those products by consignment sale, or outright sale, or otherwise, you considered that the other members of Bay Area group were your competitors for the eastern markets?

A. Yes, they were my competitors.

Q. Were you aware of the arrangements between the association and Mr. Reynolds from the time the organization was [345] formed as a corporation until you resigned?

A. Mr. Reynolds was paying the—yes.

Q. Do you know whether there was ever any understanding between Mr. Reynolds and the Association, which prohibited Mr. Reynolds from operating any independent consolidation activities—and by that I mean, from operating any other consolidation business for other persons wholly distinct from the Bay Area group?

A. You have me confused there.

Do you mean his handling hard freight?

Q. Yes. For example, was there any understanding that he could not operate a consolidation for hard freight?

A. Well, he was handling hard freight. Whether it was involved in the consolidation, I do not know that end of it.

(Testimony of Virginia C. Decia.)

Q. But to your knowledge, was he precluded by any arrangement, oral or written, or otherwise, from handling flowers or hard freight in a consolidation for any other persons, other than Bay Area?

A. No.

Q. Mrs. Decia, during your activity with the Bay Area group, did you ever ship over any other service, other than Bay Area?

A. I cannot remember whether we were using Bay Area exclusively, or not, because there were incidents where some accounts would ask for Airborne, and Airborne was also willing [346] to pick up whether we——

Q. Can you tell me whether in fact you did route those shipments, and instruct Airborne to pick them up?

A. Yes, I believe they called.

Q. Do you know of your own personal knowledge, during your administration, whether any of the other members of Bay Area used the services of another carrier?

A. Yes, there were several other organizations that were using both.

Q. I take it, then, that there was no understanding amongst the membership that the members were exclusively to use the services of Bay Area, once they joined the group?

Mr. Gaudio: Just a moment.

Mr. Examiner, by the Enforcement Attorney's own evidence in this case, there were at least 25

(Testimony of Virginia C. Decia.)

members, and in the absence of any specific record as to what any such understanding might have been, I submit without a further foundation, that this witness would be purely speculating as to whether or not they ever did, whether there was any understanding that they would, or they should not, or any other circumstances.

Mr. Stowell: Mr. Examiner, she was Secretary-Treasurer of the group, and she certainly was the official custodian of the minutes, I take it.

Examiner Walsh: Let us ask Mrs. Decia if she knows of any prohibition against these members from using the services of [347] another indirect carrier.

Q. (By Mr. Stowell): Mrs. Decia, would you answer the question of the Examiner, please?

A. No, there was nothing like that. They could use either service. It was entirely up to them, up until the time I left the organization.

Q. I understand. All of my questions are limited to the period of your connection with Bay Area.

Do you know whether a member, in joining Bay Area, undertook to offer any particular amount of shipments to Bay Area? A. No.

Q. Your answer is that a member did not undertake to—

A. He did not have to promise any particular amount, or anything.

Q. Can you tell me how many charter members there were, or how many persons signed the original of EA-318?

(Testimony of Virginia C. Decia.)

A. No, there was somewhere in between 20 and 25, I surmise. I do not remember the exact amount.

Q. Can you recall how many there were when you left the organization?

A. About the same amount. A few extra growers were added, and a few had dropped out, so it was approximately that amount.

Q. About when did you say you terminated your connection [348] with Bay Area, Mrs Decia?

A. On April 19, 1950.

Q. Did you also discontinue shipping via Bay Area, about that time? A. That is correct.

Q. What service did you use, subsequent to that?

A. Airborne.

Q. Do you know whether any other shippers about that time also ceased shipping via Bay Area?

A. That I would not be positive of.

Q. Do you know the date when Reynolds sold his stock to Airborne?

A. That I would not know.

Q. Did you give any kind of notice, verbal or written, to Bay Area, of withdrawal from the Association?

A. Yes, a letter addressed to Mr. Zappettini, who was President of the organization at that time.

Q. What were the circumstances which led to your withdrawal from Bay Area?

A. I just did not see fit to use their services any more.

(Testimony of Virginia C. Decia.)

Q. Did you join any other association after you discontinued using the Bay Area service?

A. There is no other organization that you have to join, to ship.

Q. Did Mr. Barulich come around to speak to you at any [349] time after you withdrew from Bay Area?

A. He might have been at the office. I was not there. He might have spoken to Mr. Alexander, who is my Manager.

I just recall, Mr. Stowell, that there was another organization which never functioned, which I think practically everyone in this room signed, with reference to shipping consolidated shipments, but I do not believe it ever functioned.

Q. Mrs. Decia, prior to the time that you withdrew from the organization, were there meetings among the shippers to determine whether others should withdraw?

A. Not that I know of. I never attended the meetings.

Q. You have mentioned that there was another association. What were the circumstances which led to the creation of that organization?

A. I believe they wanted to organize practically all the shippers, and try to make it a stronger body. However, it never functioned. There were several meetings, I believe, up at United Airlines, which I did not attend, so I do not know.

I attended one meeting, I believe.

(Testimony of Virginia C. Decia.)

Q. Do you have any knowledge as to whether officers were elected in that organization?

A. Yes, I believe I was elected Secretary, if I am not mistaken.

Q. Who was elected president of that organization? A. That I do not remember. [350]

Q. Do you have any knowledge as to what happened to Bay Area during the period while this new association was formed?

A. They were still operating.

Q. Is it your testimony that during the organization period of this new association, members of Bay Area continued to ship via Bay Area?

A. Yes.

Q. Mrs. Decia, was a meeting held in your place of business for the particular purpose of merging of Bay Area and this new association that you mentioned?

A. No. The only meetings that were held in my office was the organizing of Bay Area.

Mr. Stowell: I have no further questions.

Examiner Walsh: We will have a 5-minute recess.

(Short recess taken.)

Examiner Walsh: Come to order, ladies and gentlemen. We have finished your Direct Examination, Mr. Stowell?

Mr. Stowell: That is correct.

Examiner Walsh: Cross-Examination, Mr. Gaudio.

(Testimony of Virginia C. Decia.)

Cross-Examination

By Mr. Gaudio:

Q. Mrs. Decia, this organization of which you were elected Secretary, was that the California Consolidators?

A. I believe you have the name wrong.

I believe it was Northern California Consolidators. [351]

Q. Northern California Consolidators?

A. That is right.

Q. And who participated in that group?

A. At the time that I recall now, there were so many meetings at that time of different organizations, the first meeting was held at my office, and at that time I believe Mr. Reynolds had given his resignation.

It was decided that all the shippers should get together and there was quite a discussion there. I think Ace Hunt was there. He showed what could be done if all the shippers worked together, in the saving of rates, on the total amount of tonnage. And it was decided that there would be a meeting in the United Airlines Conference room some night. Just when that was, I do not remember.

The meeting was held, and officers were elected, and the organization was decided to be incorporated, I believe. Mr. Bowdish was the Executive Secretary at that time.

Q. And you became Secretary?

A. I became Secretary, and I believe Mr. Zap-

(Testimony of Virginia C. Decia.)

pettini became President, and Jim Boodel was vice-President.

Q. What year was that?

A. The early part of 1950, I believe.

Q. The early part of 1950? A. Yes.

Q. Do you know what the status of that group is at this [352] time?

A. I do not believe that it is functioning.

Q. Did you as Secretary ever sign or subscribe to articles of incorporation as such?

A. I believe I did, yes.

Q. Do you know what was done with them?

A. I do not know where the records are.

Mr. Bowdish, as I say, was the Executive Secretary. I was merely a figurehead.

Q. You were merely the Recording Secretary, or something?

A. That is right. He took minutes.

Q. Those documents were not placed in your custody or control? A. No.

Q. Do you know where a copy of such articles would be obtained?

A. I have a copy in my office. Not of the articles of incorporation, no.

Q. Of what particular document?

A. Of a document signed by Mr. MacPherson, the articles. Something similar to this. (Indicating document.)

Q. You mean Mr. MacPherson of Airborne Flower & Freight Traffic?

(Testimony of Virginia C. Decia.)

A. It was going to be worked through him, yes. At that time, I believe Bay Area was not functioning. [353]

Q. Was Bay Area not functioning because of the transfer of equipment formerly used by Mr. Reynolds to Airborne?

A. It might have been, but Mr. Reynolds had given his resignation the latter part of 1949, I believe. I do not remember exactly. The day he came to this meeting, he was invited. He had his attorney along with him, Mr. Truce, I believe.

Q. Had you at that time resigned as Secretary of Bay Area? A. No, I did not resign.

Q. You were still Secretary?

A. I did not resign until April.

Q. And this occurred when?

A. Somewheres about there. The reason for my resigning from Bay Area was the fact that I had signed papers to this other organization.

Q. And when had that occurred, in point of time?

A. Somewheres in the early part of 1950.

Q. And up to that time, as Secretary of Bay Area, you knew of no resolution of the Board of Directors to dissolve formally the organization known as Bay Area?

A. I believe that we were all concerned with the fact that we would not have any trucking.

Q. You were concerned with the fact that you were bereft of any trucking equipment?

A. That is right. [354]

(Testimony of Virginia C. Decia.)

Mr. Wolf: That is not the answer of the witness, Mr. Examiner. The witness said, "We were concerned about the fact that we might not have any trucking." Counsel added the word, "equipment" after "trucking". The witness did not use the word "equipment".

Q. (By Mr. Gaudio): Is it a fact, Mrs. Decia, that the reason was that the organization known as Bay Area, of which you were then Secretary, no longer had available Mr. Reynolds' trucking service or equipment?

A. With reference to equipment, I do not know. With reference to service, he had placed his resignation of not serving us. I do not know what happened to his equipment.

Q. I see. You understand that to have meant his equipment would no longer be available for Bay Area's use?

A. His services would no longer be available. He was dissatisfied with the method that Bay Area was being used. He wanted more money, and I believe that he was dissatisfied also with Mr. Barulich—

Q. But you are not prepared to say at this time, since you do not know, whether in fact that involved the transfer of any equipment to Airborne?

A. I would not know.

Q. Have you ever heard of the California Consolidators?

A. Northern California Consolidators. [355]

(Testimony of Virginia C. Decia.)

Q. No, I am speaking of California Consolidators.
A. No, I have not.

Q. Your answer is no? A. No.

Q. Have you ever, in the recent past, arranged for the handling of your shipments through this organization known as California Consolidators?

A. We merely shipped by Airborne, continued to ship by Airborne, inasmuch as this organization never did anything, never functioned.

Q. Would you say it was not a fact that your shipments via Airborne were handled under the name of California Consolidators?

A. Our manifests for the shipments that we make are Airborne.

Q. Airborne printed manifests?

A. That is correct.

Q. You do not know what disposition it made of the shipments, and whether they are handled by an organization called California Consolidators?

A. That I do not know.

Q. When you use the words, "all of the shippers" do you mean all of the shippers that saw fit to subscribe to this letter of invitation to the air lines, or whatever it was?

A. By that it was to be open to both growers and shippers. [356] Anyone could use the service.

Q. Yes, but when you say that Bay Area served all the shippers, are you implying by that that Bay Area served all of those subscribed to the letter?

A. That is right.

(Testimony of Virginia C. Decia.)

I do not know whether they used anyone else.

Q. And your recollection was that this document that they subscribed was longer than Exhibit EA-318?

A. I believe there was additional pages, yes.

Q. I show you what appear to be true copies of articles of incorporation, together with certain amendments to the organization incorporated under the name of Bay Area Flower Shippers & Growers, Inc., and particularly page 3 thereof, showing the names of 19 individual members.

A. I am not familiar with the name Pierce. Oh, that is Al Enoch, Bob Pierce.

Q. Yes.

A. Yes. I am not positive that this fellow Brunetti signed, Oakland Flower Shop.

Q. Now, in your prior testimony, when you say that the names of these members appeared on a longer sheet of paper, are you referring to a document such as this? (Indicating document.)

A. Yes, that size paper, a legal sheet.

Q. And could it have been this document, with the original names written on it, that you say you delivered to Mr. [357] Barulich?

A. Whatever I had in my file was delivered to Mr. Barulich. There were three copies of it. Each individual had to sign three different sheets at the time when they signed it.

Q. The question was, could the document that you had reference to be the articles of incorporation, which was subscribed by all of the members?

(Testimony of Virginia C. Decia.)

A. That is right.

Q. You say it could have been?

A. It could have been.

Q. Exhibit EA-318, dated April 4, 1949, of which you have a copy before you.

Is my understanding correct that this document was prepared for two reasons: first, for subscription by those persons who would be interested in the contents of that document; and then the document would be delivered to the air lines. Was that the purpose of this document?

A. That is right.

Q. Can you state definitely that any single counterpart of this document, with all of the original signatures, was retained by you?

A. That I do not know. I do not remember. There were some of these copies also sent to the trucking lines.

Q. But you do remember that a certain number of them, which was signed in 2, 3, 4 or 5 different counterparts, however [358] you had to distribute, were delivered to the air lines?

Do you remember that?

A. The originals were not delivered to the air lines. The originals, there were only three copies. One was kept in the office, one, Clyde Reynolds had, and one, Mr. Truce.

Q. So that if you do not have the original one of the three that you just mentioned, is it your testimony that Mr. Reynolds or Mr. Truce would have?

A. Or Mr. Barulich.

(Testimony of Virginia C. Decia.)

Q. Unless the document you refer to was the articles of incorporation?

A. Because Mr. Barulich has my complete file. I did not take a listing of what he got. It was the complete file.

Q. But you did, I assume, when Mr. Barulich came into your office, and showed you that letter suggesting that you release all of the records to him, you just opened the drawer, picked up what you had, and delivered it to him?

A. I was not there. Mr. Alexander handed them to him.

Q. You personally did not deliver these documents to Mr. Barulich?

A. No, I did not. Mr. Alexander did. But the complete file is gone. It was very thick.

Q. Then if I understand your testimony correctly, at one time you, as Secretary, had a file in your office containing Bay Area records; is that right? [359]

A. That is correct.

Q. Some time in your absence, Mr. Barulich called and left at your office this signed receipt?

A. February 12, 1950.

Q. But you are not certain?

A. They spoke to me on the 'phone. I was home. And I gave Mr. Alexander the authority to release it.

Q. So you do not know which particular documents Mr. Alexander gave to Mr. Barulich?

A. He gave him the complete file.

(Testimony of Virginia C. Decia.)

Q. But you were not present?

A. They would not disappear any other place but to Mr. Barulich.

Mr. Gaudio: Let us ask that last be stricken as not answer to the question.

Examiner Walsh: I think that we are going to have to recall Mr. Alexander. I believe that we will allow that question to remain, to be answered by him.

Q. (By Mr. Gaudio): So it is your assumption, then, and conclusion, that whatever documents you had were delivered by Mr. Alexander to Mr. Barulich?

A. I do not assume anything. I state that he got the complete file.

Q. And you are basing that statement on your instructions [360] to Mr. Alexander?

A. That is correct, because I talked to Mr. Alexander at the very time that Mr. Barulich was in the office.

Q. What did you say to Mr. Alexander?

A. I told him to give him the complete file. I had requested him, a year before, to pick that complete file up.

Q. And he said he would?

A. He did give him the file.

Q. You mean, when you talked to Mr. Alexander on the telephone, he said in answer to your direction, that he would do so?

A. He said that he would.

Q. When did your firm, California Floral Com-

(Testimony of Virginia C. Decia.)

pany, decide that continuing to use Bay Area would no longer effect any savings or economies for your firm?

A. I did not state that. I stated that I did not care to use their service any more, and resigned, stopped using it.

As a matter of fact, I stopped using their service before my letter of April 19, 1950.

Q. Then the discontinuance of your use of Bay Area's facilities and service was not because of any failure to obtain the objectives which you sought when you first organized it?

A. The organization was not being run as I saw fit to belong as a member.

Q. Are you implying that the function of the various [361] officers and directors did not meet with your approval?

A. For personal reasons, yes.

Q. Are you ascribing your resignation or termination of your activities strictly on a personal basis?

A. The way I operate my business, yes.

Q. Have you been able to realize the same economies which I assume you enjoyed while you used Bay Area, since you have gone to Airborne?

A. Yes, I believe their service is exceptionally good.

Q. Do you obtain the same benefits, insofar as your costs of transportation are concerned?

A. I do.

(Testimony of Virginia C. Decia.)

Q. You do?

A. With the exception that I do not have to pay a membership fee to ship through Airborne.

Q. In other words, you get the same rate from Airborne, and you do not have to pay a membership fee?

A. That is correct.

Mr. Gaudio: I think that is all.

Examiner Walsh: Mrs. Decia, I would like to ask you about this document indentified as EA-318, which is the letter that you have before you.

At the time that you had that document before you, were there any other pages attached, or was it a single page?

The Witness: This document, if I remember correctly, was [362] a document made up by Mr. Truce for the air lines, and for the trucking companies that we were trying to get to handle our shipments at the other end, and they had to have some signatures on them. This was not the original with all the signatures.

Examiner Walsh: It was a single page, was it, or were there other pages?

The Witness: There were other pages attached.

Examiner Walsh: Would you recognize it as being pages similar to the document that Mr. Gaudio just showed you, which I believe he described as the articles of incorporation?

The Witness: It was not that thick.

Examiner Walsh: Mr. Wolf?

Mr. Wolf: Yes, I have a few questions.

Q. (By Mr. Wolf): Mrs. Decia, I am in-

(Testimony of Virginia C. Decia.)

terested in this organization that has been mentioned, Northern California Consolidators.

Is that the name? A. That is correct.

Q. Do you recall when any meetings were had in regard to that organization?

A. The original meeting was held at my office in Redwood City.

Q. About when?

A. The early part of 1950.

Q. And do you remember how many flower growers attended [363] this meeting?

A. I know that the Board of Directors had a meeting before it was opened to the rest of the members, and I believe Mr. MacPherson was invited at the time. There might have been 10 or 12 of us, including Ace Hunt, from Slick Airways.

Q. At that time, was there any membership list of the new organization?

A. Not at that meeting, but at the next meeting, which was held at the United Air Lines Conference room, the members signed up.

Q. When was that next meeting?

A. The date I do not recall too closely.

Q. Do you remember, in relation to the first meeting in February, when it was? Within a month, two months?

A. It must have been, because right after the meeting at United Air Lines, I wrote my letter resigning from Bay Area.

Q. Now, after this second meeting that you re-

(Testimony of Virginia C. Decia.)

call being held at United Air Lines, how many people were present, approximately?

A. Oh, there might have been 25 or 30, possibly more.

Q. Were a number of them flower growers and shippers?

A. There were flower growers and shippers.

Q. Do you recall any of the names of the flower growers at that meeting, who were then members of Bay Area?

A. You mean shippers and growers, both? [364]

Q. Yes.

A. Yes, there was Mr. Zappettini, there was James Bonaccorsi, and there was ourselves, there was Jim Boodel, and there was, I believe, T. Ozawa, and I believe Kitayama was there, from San Francisco Wholesale.

Exactly the different names, I do not recall. I can remember a lot of them that did come, that did not sign up.

Q. Do you know whether a membership list is in existence anywhere?

A. Yes, I believe that Mr. Bowdish would have that list.

Q. Mr. Bowdish?

A. That is right.

Q. Where is he?

A. He is the Executive Secretary of this other flower shippers' association that we have, and at that time it was decided that they would have him as Executive Secretary of this new organization

(Testimony of Virginia C. Decia.)

that they were planning on. He is in San Francisco.

Q. Is there another flower shippers' association in existence? A. Yes, there is.

Q. What is the name of it?

A. Northern California Flower Shippers.

Q. Is that the same organization that was formed in 1950?

A. Neither one. Northern California Flower Shippers [365] is strictly wholesale flower industry organization.

Q. What was the reason, if you know, for the formation of Northern California Consolidators?

A. The idea was to get as many of the shippers as we possibly could do, to get the poundage, to save our consignees money on their flower shipments.

Q. Was the organization sponsored in any manner by the members of Bay Area? A. Yes.

Q. What members?

A. Mr. Bonaccorsi, Mr. Zappettini, Mr. Boodel, myself, at the time.

Q. Why did you feel it was necessary to form a new organization?

A. If I recall correctly, there was a short time there that Bay Area was not functioning, and we figured that by starting a new organization of this kind, we could, as I say, save money.

Q. Do you recall why Bay Area was not functioning? A. That I do not know.

Q. It just stopped functioning, so far as you know?

(Testimony of Virginia C. Decia.)

A. I believe that Mr. Reynolds resigned. His services were not there any more, and I do not know what happened to Mr. Barulich.

Q. If I were to state to you that Mr. Reynolds resigned in [366] April of 1950, could you subscribe that his resignation in April of 1950 was the only reason for the non-functioning of Bay Area?

A. That I would not know.

Q. How were flowers shipped during this period when Bay Area was not functioning, through what means, if you know?

A. Well, in our case, we were shipping through Bay Area.

Q. Do you know how the other growers were shipping?

A. I surmise through Airborne. That was the only other organization.

Q. You say that Northern California Consolidators never became operative; is that correct?

A. That is correct.

Q. And Bay Area began functioning again, do you remember that? A. That is right.

Q. Do you recall under what circumstances, or why Bay Area commenced to function after the cessation of business?

A. I believe that Mr. Barulich contacted the different shippers and growers, and formed an organization of his own.

Q. When you say you believe that Mr. Barulich formed an organization of his own, you are not im-

(Testimony of Virginia C. Decia.)

plying that another organization was formed, are you?

A. That I would not know. I do not know any details of it.

Q. Do you recall that the original name of the organization [367] that we are referring to now as Bay Area, was Bay Area Flower Shippers & Growers, Inc.?

A. That is right.

Q. Do you recall that in June of 1950, the name of the corporation was changed to Consolidated Flower Shipments, Inc.-Bay Area, which is its name today; do you recall that?

A. That is correct.

Q. Now, when you say that Mr. Barulich formed an organization of his own, could it be that with the advent of Mr. Barulich into this proposition, the name of the corporation was changed? Do you know that?

A. I am not familiar with any of the new organization—

Q. In any event, your testimony is that Bay Area ceased to function for a period sometime in 1950; that it then commenced to function again, some time thereafter, and your recollection is that Mr. Barulich was the moving source whereby the Bay Area group started to function again; is that correct?

A. That is correct.

Q. Do you ship to Charles Fudderman in New York?

A. I do.

Q. Has he ever asked you to ship via Bay Area?

(Testimony of Virginia C. Decia.)

A. He has demanded for us to ship by Bay Area.

Q. Has he given a reason for that demand?

A. It seems like they have a salesman, or something, in the east, by the name of Cereghino, and Fudderman claims that [368] he could save money by shipping through Bay Area. I asked for bills back, but I have never received them.

Mr. Wolf: That is all. Thank you, Mrs. Decia.

Examiner Walsh: Any Redirect, Mr. Stowell?

Mr. Stowell: No.

Mr. Gaudio: May I follow up on the questions asked by Mr. Wolf, in order that the record may be clear?

Q. (By Mr. Gaudio): Mrs. Decia, I show you these documents again, the amendments to the articles which changed the name to Consolidated Flower Shipments, Inc.-Bay Area, subscribed the 10th day of January, 1950, over the name of William Zappettini as President, and Virginia C. Decia as Secretary-Treasurer.

That was the date, was it not, January 10?

A. I do not remember the exact day.

Mr. Wolf: Mr. Examiner, may we have a copy?

They have a certified copy of the articles and the amendments to the articles of Bay Area, and we will be glad to agree to putting it in any time you wish.

Mr. Gaudio: We are going to produce it in due course. It will be a part of the record. I am trying to keep the names straight, now. Counsel seemed to

(Testimony of Virginia C. Decia.)

imply that the name change took place in June of 1950.

You do not remember?

The Witness: I would not remember definite dates. [369]

Q. (By Mr. Gaudio): But this document is a true copy, is it?

A. If my signature is on it.

Q. Well, it is from the file that you say you turned over to Mr. Barulich.

A. But I would not remember the day.

Examiner Walsh: What I am interested in knowing is whether there was a name in between there, which did not have the "Inc" in between, or is that——

Mr. Gaudio: The original incorporation was Bay Area Flower Shippers & Growers, Inc. On January 10, 1950, duly filed in the office of the Secretary of State of the State of California, on January 25, 1950, by amendment to the articles, the corporate name was changed to its present form, Consolidated Flower Shipments, Inc.-Bay Area.

Mr. Wolf: Mr. Examiner, at one time there was an organization without the letters "Inc" after the name. Counsel will correct me if I am wrong. I believe the original organization was unincorporated, with the same name as the subsequent corporation, but without the "Inc" behind the name.

Is that correct?

Mr. Gaudio: Frankly, I do not know that far

(Testimony of Virginia C. Decia.)

back in the history, but I believe that is correct. Mr. Barulich will confirm that, in due time.

Examiner Walsh: And then that was superseded by the [370] corporation?

Mr. Wolf: That is correct.

Examiner Walsh: And that was titled Bay Area Flower Shippers & Growers, Inc.?

Mr. Wolf: That is right.

Mr. Gaudio: Then that name was changed to its present form on January 10, 1950.

Q. (By Mr. Gaudio): Now, is that the organization that you were referring to, or is there yet another organization that is apart from Bay Area, as it is now known?

A. There was another organization started, which is not functioning.

Q. That was the Northern California Flower Shippers? A. That is right.

Q. Now, has that anything to do with the San Francisco Flower Growers Association, or any other similar group? A. None whatsoever.

Q. Did you ever read the articles of incorporation of this Northern California Flower Shippers? A. No, I did not.

Q. Were any ever subscribed?

A. I believe so. I believe Mr. Bowdish could give you all that information.

Q. I was just trying to learn for this record at this [371] point if you could tell us essentially what the purposes of that organization were?

(Testimony of Virginia C. Decia.)

A. Well, it all started—I was not at that meeting—with hiring a man by the name of Van Duker, that was going to be a traffic manager, if I remember correctly, and he had this idea of starting this organization and trying to get all the shippers in the floral industry together to save, as I say, this terrific amount.

Examiner Walsh: Did you not testify before that you were interested in obtaining greater poundage for your shipments?

The Witness: That is correct.

Q. (By Mr. Gaudio): You mean by that, that the greater weight of the shipment, which might be comprised of many component parts, the more money you would save on rates?

A. The greater amount of shippers in the organization would be the saving on rates.

Q. I show you what purports to be a copy of a written consent of members to amend the articles to change the name to Consolidated Flower Shipments, Inc.-Bay Area, and call your attention to that list of names. Will you glance over them and tell me how many there are, and if you recognize those names as any part or number of the ones that signed the letter of April 4, referred to as Exhibit EA-318?

A. Well, I believe there are two changes. [372]

Q. Two additional names?

A. If I remember correctly, I do not remember Yamane's name being on the first list, and I am doubtful about Adachi.

(Testimony of Virginia C. Decia.)

Q. Did you count them? There are 19, are there not?

A. As I say, there were members that came in, and members that dropped out.

There are 19 on there.

Q. And your best recollection at this time is that of the 19 which appeared on the written consent to the amendment, 17 of them also subscribed to Exhibit No. EA-318?

A. If I remember correctly, there were 19 names on the other list, too.

Q. Have any of your customers asked for the Bay Area service you ceased to be actively engaged as a member?

A. This one account in New York. And that is when I called up Mr. Barulich to use his service, and he told me that they would not be able to pick up at our packing house unless we paid \$50 to belong to the organization. So therefore I did not use the service.

Q. Was that the first knowledge you had of the membership dues, or membership fee assessment?

A. No. I received a letter from Mr. Barulich on October 24, 1951, that we had been dropped out because we had forfeited our privileges in the organization by not paying our dues, and that the sum of \$50 was the annual dues. [373]

Mr. Gaudio: If I may at this point, if the Examiner please, and with counsel's consent, I would like to read this letter into the record. It is over the letterhead of Consolidated Flower Shipments,

(Testimony of Virginia C. Decia.)

Inc.-Bay Area, October 24, 1951; "California Floral Company, P. O. Box 4, Redwood City, California. Dear Sir: In accordance with the resolution of the Board of Directors and the articles of incorporation and by-laws of Consolidated Flower Shipments, Inc.-Bay Area, you are hereby notified that your membership in this Association, together with privileges thereunto pertaining, have been forfeited, and you have been dropped from the rolls as a member, for failure to pay annual dues in the sum of \$50.

"Reinstatement as an active member entitled to all of the privileges of this Association will be subject to the approval of the Board of Directors, upon such terms as may be imposed, pursuant to the articles of incorporation by-laws and resolution of the Board of Directors of Consolidated Flower Shipments Inc., Bay Area. Very truly yours, Consolidated Flower Shipments, Inc.-Bay Area, By John C. Barulich, Executive Secretary."

That is all.

Examiner Walsh: If there are no more questions of Mrs. Decia, you may be excused. Thank you, Mrs. Decia.

(Witness excused.)

Mr. Stowell: I would like to call Mr. Nuckton at this time. [374]

Whereupon,

JOHN NUCKTON

was called as a witness for and on behalf of the Enforcement Attorney, and having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Stowell:

Q. Mr. Nuckton, what is your exact name?

A. John Nuckton.

Q. What is the business name under which you function?

A. John Nuckton, Inc.

Q. Incorporated?

A. It is now, since the first of the year.

Q. What was the earlier name?

A. John Nuckton & Company.

Q. Was it a partnership prior to the first of the year?

A. Well, we acted as if it was a partnership. It belongs 100 per cent to me, but I had partners without capital investments.

Q. What business was John Nuckton & Company engaged in?

A. Buying and selling cut flowers.

Q. Is that also true of the corporation?

A. Yes, the same.

Q. Are you a member of Bay Area, Mr. Nuckton?

A. Yes, sir. [375]

Q. Are you also an officer of Bay Area?

A. Yes, sir.

Q. When did you become an officer of Bay Area?

(Testimony of John Nuckton.)

A. At the last annual meeting, which should have been last June, if I am not mistaken, May or June.

Q. Of 1951? A. Yes.

Q. Prior to that time, were you active in the affairs of Bay Area?

A. I was a member and director.

Q. When were you first made a director of Bay Area?

A. I am not sure whether that was the year before. I am not sure when I became a director. Am I allowed to ask Mr. Barulich?

Q. Well, subject to correction by records, insofar as you know, would you care to ask Mr. Barulich?

A. Yes.

The Witness: Does the record show when I became a director?

Mr. Barulich: Yes, the first year you were secretary-treasurer, also a director. At the last annual meeting, which was in June, you became the president.

Examiner Walsh: Do you adopt that as a true statement?

The Witness: Yes.

Q. (By Mr. Stowell): Mr. Nuckton, do you sell flowers in New York City? [376] A. Yes.

Q. Do you sell flowers in Philadelphia?

A. Well, I send them there. I do not sell them, really, I send them on consignment.

Q. Are all of your shipments on consignment?

A. No, about 95 per cent.

(Testimony of John Nuckton.)

Q. Have you ever engaged the services of Edward Cereghino? A. No, sir.

Q. Have you met the person?

A. I have known him for years.

Q. Has Mr. Cereghino ever attended a meeting of the Bay Area group?

A. No, not when I was present, and I believe I have been present at all meetings, except one or two.

I can tell you more about Mr. Cereghino.

Q. Continue, please.

A. He is an agent for Golden Gate Wholesale Florists, and for the Los Angeles outfit. He has no connection at all with Bay Area.

Q. None whatever? A. No.

Q. Did you hear the testimony of Mr. Bonaccorsi this morning? A. No.

Q. Mr. Nuckton, you are very active in the affairs of [377] Bay Area at the present time, are you not?

A. I attend all the meetings, and all the directors' meetings.

Q. Did you ever devote any time to Bay Area during the working day, at your place of business, if necessary? A. Yes, if necessary.

Q. Mr. Nuckton, I am going to show you a document. I would like to have you examine it. It is a photostatic copy of a document which reads, to Philadelphia: "We have received a routing order from you requesting that we move our shipments via the services of the airport forwarding company operating from this area"—mainly by Airborne.

(Testimony of John Nuckton.)

Would you examine it, please?

Do you recognize that document, Mr. Nuckton?

A. No. I write so many letters. I would have to read it through, first.

Q. Please do. Do you recognize the document?

A. Yes.

Q. Were the originals thereof ever mailed? By "originals" I mean the final letters.

Mr. Gaudio: Do you mean, was a letter substantially in this form——

Mr. Stowell: ——mailed out as an original, yes.

The Witness: Yes, I would think so. It looks like it. [378]

Q. (By Mr. Stowell): The top of that paper says, "John, what do you think of this letter to the Philadelphia accounts who sent in routing orders?" Who is "John"?

A. That would be John Barulich. No, that would be John Nuckton. I think I see the whole story in back of that document, now.

Q. Who drafted the document?

A. This was drafted by John Barulich, because a representative of Airborne had been going around to several people and had them ask routing orders, which is easy to obtain.

A nice fellow comes around and asks you to sign such a thing, and it does not mean anything to them, anyhow, because I pay the freight. So they gave it to them.

There were several of these things that came

(Testimony of John Nuckton.)

through, and I felt it necessary to do something about it. I personally did not pay any attention to the routing orders, because I pay the freight anyhow, and I follow the cheapest way, and if anyone in New York or Philadelphia tells me to ship via so-and-so, that does not mean a thing to me, if it costs me more. They do not pay; I pay.

Q. (By Mr. Stowell): Incidentally, have you had any requests from your consignment consignees to route via Bay Area? [379]

A. No, but I have had them from representatives of Airborne who had been around in the east and obtained signatures on their forms.

Q. Please continue.

A. I felt it necessary that something had to be done about that, and I told John Barulich, and we discussed it. And he felt it was necessary that we should write a letter, over my signature as president, to tell them the situation, tell them the story, tell them why we could not follow these routing orders, because it was costing us money. And Mr. Barulich sent me this form.

Q. This draft?

A. This draft of a letter, suggesting that I write that. I thought it was better if I wrote it myself as a shipper, rather than as president of Bay Area. So I used part of his words, and scratched out others, and made it as my own letter, and sent it out.

Q. You stated it cost you more money when you shipped via Airborne. Is that true, insofar as you ship on an outright sale?

(Testimony of John Nuckton.)

A. No, it costs the customer more. And indirectly, it costs me more, because if rates go up too high, he stops ordering with me. He considers his whole cost, not only the cost of the merchandise, which is sometimes less than half of the total [380] cost.

Mr. Stowell: I have no further questions.

At this time, I move that this document be marked for identification as EA-323.

Examiner Walsh: Has that document been sufficiently described in the record?

Mr. Stowell: I believe it has. I read the first few sentences into the record.

Examiner Walsh: That will be marked for identification as Enforcement Attorney's Exhibit No. 323.

(The document above referred to was marked for identification as Enforcement Attorney's Exhibit No. 323.)

Mr. Stowell: I will defer offering it, if you prefer.

Mr. Gaudio: The thought occurred to me that the witness testified that this particular draft was not released, but that if he recalls correctly, a similar letter was, and if that is what the Enforcement Attorney is interested in, it will be our purpose to develop where the true copy of that is.

Mr. Stowell: I would like to have them both in. Could you produce a true copy?

Mr. Gaudio: Just a moment. If this letter in the

(Testimony of John Nuckton.)

form as indicated by Exhibit EA-323 for identification, was not released, for whatever reasons Mr. Nuckton might have seen fit at the time, I submit it would not be material or pertinent in this [381] case.

Mr. Stowell: Mr. Examiner, I feel that both the actual letter which was sent out, and the draft, are pertinent, indicating the steps which led to the ultimate letter.

For example, he pointed out that first they thought that letter would go under John Nuckton's signature as president, and then it was decided that it would go under his individual name. That illustrates that even though the final letter may have gone out under his name as a shipper, perhaps the letter was actually a Bay Area document, at least one step in a possible inference in that direction.

Therefore, I feel that we should have the draft as well as the original, for any inferences which the Board may care to make.

Also, the draft has on it the comment which I read to him, and all that should be considered in the light of his testimony, as well as the actual letter which went out.

I therefore request that the Examiner have the witness supply us with a copy of the actual letter which went out, and that that be marked for identification, and both documents be offered in evidence.

Examiner Walsh: I will ask Mr. Nuckton to furnish a copy of the letter which was actually sent, and we will mark this draft for identification as

(Testimony of John Nuckton.)

Enforcement Attorney's Exhibit No. 323, and we will reserve Exhibit No. 324 for that particular copy when it is produced. [382]

(Enforcement Attorney's Exhibit No. 324 was reserved for marking the document above referred to.)

Mr. Stowell: Mr. Nuckton, will you undertake to produce a copy of the letter which actually went out?

The Witness: I am not sure that I have a copy. In a case like that, I mostly type my letters myself, and I probably did not go to the trouble of making a copy, and kept that as a copy. I do not see how the thing got here. It belongs either in my file, or in my wastebasket.

Mr. Stowell: For your information, that was secured from the files of Bay Area, by the Enforcement Attorney.

Will the attorney for the respondents undertake to supply—

The Witness: May I complete this—I will say that this is a copy of a letter that I wrote personally as a shipper.

Mr. Gaudio: Just in case that document is not available, according to the witness' testimony, if he only wrote a single original and mailed it, maybe I ought to ask this question:

Q. (By Mr. Gaudio): Can you recall, Mr. Nuckton, if with the deletions marked herein, the part remaining was the form and substance of a

(Testimony of John Nuckton.)

letter which was in fact sent, or was it further changed, if you know?

The Witness: No, I would not expect so. I would think that I sent the letter exactly like this, after the changes had been made. [383]

Mr. Gaudio: The changes noted on this particular draft?

The Witness: Yes, but I did not send it for Bay Area, I sent it for myself.

Mr. Gaudio: Can you say now that you do not have any copy of the letter which was actually sent?

The Witness: It is possible. I would have to go and dig deep. And my secretary is sick, so I do not know how I could do that.

Mr. Gaudio: Let us say for the record that if a copy is available, we will produce it.

If it is not available, maybe for the purposes of this record, the witness' testimony will be sufficient that a letter similar in form to Exhibit EA-323, with deletions noted thereon, was issued. Is that right, Mr. Nuckton?

The Witness: Yes.

Mr. Stowell: Who is doing the examining now? I have forgotten.

Examiner Walsh: I believe you had just concluded your direct examination.

Mr. Stowell: I would like to ask one more question of Mr. Nuckton.

Q. (By Mr. Stowell): To whom was the final version of that letter sent?

A. To a number of wholesalers I do business

(Testimony of John Nuckton.)

with. I sent it probably to all those that sent in one of these routing [384] order forms that I had obtained from a traveling man there, and nobody objected to this, they were all satisfied with my telling them that I was not going to do it, and was shipping by Bay Area all the time because I could not afford it the other way.

Mr. Stowell: No further questions.

Examiner Walsh: Cross - examination, Mr. Gaudio.

Cross-Examination

By Mr. Gaudio:

Q. Mr. Nuckton, since you sent the letter which has been indicated as Exhibit EA-323, have your customers expressed any dissatisfaction with service now offered or since received, on shipments handled by Bay Area?

A. This No. 323, is that this thing here?

Q. Yes.

A. Yes, I have not had any more routing orders. In any event, I am the one to decide how this stuff is routed, because I pay the price.

Q. You felt that inasmuch as from indication on these routing slips that came in raised some question in your customers' minds, you felt that it was necessary to explain why you were shipping via Bay Area? A. That is right.

Q. Have you had any complaints from your receivers, regarding the method in which their shipments have been received? [385]

(Testimony of John Nuckton.)

A. No, sir, on the contrary.

Q. Insofar as Bay Area shipments are concerned?

A. No, sir.

Q. Have any of your shipments been routed via Airborne?

A. Only in very few instances, to Pittsburgh only, because services of Airborne were available there, while Bay Area's service was somehow interfered with. We were told that deliveries through Bay Area were always made late in the day there, after the market was over. For some reason the trucker handled both, and he for some reason gave Airborne preference, until this thing was remedied again, somehow, and now we have our own consolidation into Pittsburgh, and are satisfied with the service there, again.

Q. Have you had occasion to ship to New York, Mr. Nuckton?

A. Yes, I ship there very often.

Q. Which particular service do you use, the organization's service as Bay Area, or Airborne?

A. Always Bay Area.

Q. To New York?

A. Yes.

Q. And have your customers registered any complaint as to those shipments?

A. No, not about Bay Area's shipments.

Q. Have there been any complaints on the New York [386] shipments via Airborne?

A. Yes. I have one particularly in mind where Airborne charged \$1.80 some-odd freight, where the actual freight should have been \$1.20 and some dollars—about 50 per cent more.

(Testimony of John Nuckton.)

The lady shipped to was very much perturbed about it, and she even had difficulty in getting them to adjust it. They refused it at first. She had to threaten finally to make complaint with Washington, she said, before they adjusted it.

Q. Have you found in your experience that the question of rates delivered to your customers in the handling of these flower shipments is of vital importance to your marketing of flowers in the east?

A. Yes. We buy stuff for cash, and we ship it out C.O.D. and our net profit after our expenses are paid is only about \$1.00 a box. So it stands to reason if our shipping went up by even \$1.00, we would have to close our doors.

Q. It is your testimony that at least in your experience for your shipments, the question of rates is the basis of complaints in general which you have received from your customers, or is it both rates and service?

A. We do not get complaints. We just simply do not get our money.

Q. In other words, your net is affected by the cost of the transportation of your customers?

A. Oh, very much. The cost of transportation is more [387] than the cost of the merchandise.

Over the whole year, perhaps it is a little less, but the kind of merchandise we ship now, I happened to figure a week's business the other day, and it worked out that 69 per cent of what the stuff brought at the other end, went for transportation,

(Testimony of John Nuckton.)

and 31 per cent went to us and the producers together.

That was acacia and heather. And so, naturally, \$1.00 a box is more vital, would put us out of business.

Q. Were you one of the charter members, so-called, of Bay Area? A. No, I was not.

Q. When did you first come into the picture?

A. In the spring of 1949. That was the first crop. I was not buying any merchandise then. I only sold what I produced myself. And that was the first crop I made in California.

Q. You were both a shipper and a grower?

A. At that time, I shipped my own grown flowers only.

Q. Prior to your association with Bay Area, did you use any other shipper?

Did you ship by air, prior to your association with Bay Area?

A. No, I shipped through Bay Area from the start. This must have been in March, 1949.

Q. From the inception of your selling flowers in the [388] east, you used Bay Area's service?

A. Yes, except during the time that Reynolds broke his contract with Bay Area and lost his trucks and stopped handling it, and Bay Area was out of business.

Q. What did you do?

Examiner Walsh: I think that testimony is a little bit at variance with the testimony given by Mr. Reynolds.

I think he testified the truck was sold, and I do

(Testimony of John Nuckton.)

not think there is anything in the record so far that Mr. Reynolds broke a contract. I think we should have that portion of the record straightened out.

Mr. Gaudio: Maybe the witness is using the wrong word.

Examiner Walsh: Did you mean it in that sense?

The Witness: I only meant to say that he stopped doing what he was doing, prior to that.

Q. (By Mr. Stowell): Did you have any need for any service during that period when, as you say, Bay Area was not functioning?

A. At that time, there was not much going out. I recall one instance, though, where I had to use Airborne, and that is the instance that I just mentioned, where I was overcharged 50 per cent.

Mr. Gaudio: That is all.

Examiner Walsh: Mr. Wolf. [389]

Q. (By Mr. Wolf): Mr. Nuckton, let us get to this instance where you were overcharged 50 per cent by Airborne.

How many boxes of flowers did you ship on that occasion?

A. I could not tell you offhand, the number of boxes, but the freight should have been \$1.20 and some dollars, and actually \$1.80 and some dollars was paid.

Q. Do you know the dimensions of the boxes that you shipped on that occasion?

A. Those are very small boxes, 20 inches by 10, or something like that, and sent out in bundles.

(Testimony of John Nuckton.)

Q. Do you remember when this shipment took place? A. Yes, in June, 1949.

Q. Is it possible that the overcharge in freight was due to wrong measurements or wrong dimensional weights given?

A. Well, the lady said that she could not even get a refund. They denied there was overcharge until she threatened to go to Washington.

Q. Who paid the freight on that shipment?

A. It was paid by the consignee and charged back to me.

Q. Paid by the consignee?

A. Yes, and charged to me. It was a consignment deal.

Q. What was the lady's name?

A. Well, I have the letter. Do you want me to read it?

Q. No. What was the lady's name?

A. Mrs. Nungesser. [390]

Q. And then she got her money back from Airborne, did she not?

A. She finally did, after threatening.

Q. She got it back, did she not? She filed a claim for it, did she not?

A. She finally got it back.

Q. I say, did she file a claim for it?

A. She does not say that.

Q. But you know that if you want some money back from any type of carrier you have to file a claim, do you know that, Mr. Nuckton?

A. Yes.

(Testimony of John Nuckton.)

Q. And you know very well that the first thing you do if there is damage to a shipment, or miscalculation of freight charges, you file a claim, do you not? A. Yes.

Q. That is the first thing you do?

A. Sure.

Q. After the claim is filed, it is processed, is it not? A. Yes.

Q. The air line, or the forwarder, or whoever the carrier is, looks into the validity of your claim, does it not?

Q. And then if it finds that the claim is valid, it pays you back, does it not? A. Yes. [391]

Q. Now, that was what happened to this lady, was it not? A. Well——

Q. Was it or was it not, Mr. Nuckton?

A. Well——

Q. Mr. Nuckton, did she get her money back?

A. I told you that.

Q. All right. She filed a claim for it?

A. She did not say that she did.

Q. I am not interested in what she says. I am asking you.

A. All I know is what is in the letter before me.

Examiner Walsh: That is all the witness can testify to.

Q. (By Mr. Wolf): This Exhibit EA-323, what was the purpose of sending this out to your Philadelphia wholesalers?

A. Since I can take any routing I want to, it was merely courtesy, telling them why I was not

(Testimony of John Nuckton.)

going to follow these routing orders they sent, and they were satisfied with it.

Q. You felt that if your Philadelphia accounts received a letter like this, that it would produce more business for Bay Area, did you not?

A. No.

Q. You would not produce less business, would you? A. That was not my purpose.

Q. If the letter was received by your [392] Philadelphia accounts, and complied with, there would be more business for Bay Area, would there not?

A. There could have been. That was not the purpose of my letter.

Q. I am not asking you at this moment what the purpose of the letter was.

Mr. Gaudio: I thought that was your question.

Mr. Wolf: Yes, and then I asked another question.

Examiner Walsh: Let the witness state his purpose.

Q. (By Mr. Wolf): What was your purpose?

A. The purpose of the letter was to effect a saving for myself.

Examiner Walsh: My understanding from the previous testimony was that it was a matter of self-interest.

The Witness: That is right, sir.

Q. (By Mr. Wolf): On the top of the letter is this note which has been called to your attention, Mr. Nuckton: "John, what do you think of this

(Testimony of John Nuckton.)

letter to the Philadelphia accounts who sent in routing orders?"

If your sole purpose was to save money on your own shipments, why did you have to consult John about it?

A. Because we consult John about many matters in connection with shipping. [393]

And that is from John Barulich to me, that is not from me to him.

Q. The note on top of this letter, "John, what do you think of this letter" and so forth, whose note is that? Yours, or Mr. Barulich's?

A. That is Mr. Barulich's.

Q. That is his note to you?

A. Yes, it looks so to me. It does not make sense, otherwise.

Q. So he was the first one that thought of this letter? A. No.

Q. Who did?

A. We discussed it over the 'phone. I told him that I was getting these routing orders, a representative of Airborne brought me these routing orders, and I told him we have got to do something about that, and asked what he suggested. And he came back with the suggestion that Bay Area, over my signature, write this and that, which I rejected, and said I am going to write it myself.

Q. I see. Why did you not want to send it out in the name of Bay Area?

A. Because I was not running Bay Area. I was only running my own business.

(Testimony of John Nuckton.)

Q. I see. When was the date of this letter?

A. I could not tell you, sir. It should be on there. [394]

Q. Do you know what year it was?

A. Last year.

Q. 1951? A. I would think so.

Q. You were a director at that time?

A. Yes.

Q. When did you become president?

A. June, I was president at that time. Otherwise he would not have asked me.

Q. But you just said a moment ago, you were not running Bay Area, but you were president and a director? A. I presided at the meetings.

Q. You have something to say about the policy?

A. I did not make any policy. I did not do any work except preside at the meetings.

This is not the usual corporation, where the president is the head. The president only presides at the meetings. It is a co-op.

Q. As a matter of fact, Mr. Nuckton, the original thought behind this letter was that you could increase the Bay Area's service in the east, was it not?

A. It might have had that secondary effect.

Q. Yes, and then you considered that matter, and thought that it might not be very good if Bay Area solicited business in the east, didn't [395] you?

A. I felt it might be the consignees were not interested in Bay Area, or any other outfit. They

(Testimony of John Nuckton.)

were interested in getting flowers. And I explained to them why I was not following their suggestions, because I could not afford it.

Q. I see. You mentioned something about trouble in Pittsburgh with trucking. Did I understand you correctly? A. Yes.

Q. And do you have a trucker there now, in Pittsburgh?

A. It would seem so. Of course, Mr. Barulich handles all of these details. I do not know. I know our stuff goes through Bay Area, and it is satisfactory now. For a while it was not, although there was a saving, at first, the service was not there, because the trucker fell down on the job. The trucker delivered other merchandise in the morning, and ours later in the day.

But it has been cleared up somehow. I do not know the details.

Mr. Wolf: Thank you very much, Mr. Nuckton.

Examiner Walsh: Any redirect, Mr. Stowell?

Redirect Examination

By Mr. Stowell:

Q. Mr. Nuckton, who calls meetings of the Board of Directors?

A. They are set for a certain date, some certain day each month, the third Tuesday, or something. I never remember, [396] and Mr. Barulich reminds each director of that date.

Q. To your knowledge, has Mr. Barulich ever called meetings of the Board of Directors?

(Testimony of John Nuckton.)

A. He has told me that it was advisable, and I have given him authority to call such a meeting. Particularly with this difficulty we are in now, we have had to have special meetings.

Q. Of your knowledge, do you know whether Mr. Barulich himself called the various directors, called a meeting, and subsequently called you for ratification? A. No, I would not think so.

Mr. Stowell: No further questions.

Mr. Gaudio: That is all. No questions.

Mr. Stowell: At this time, Mr. Examiner, I move that the document previously marked for identification as EA-323 be admitted in evidence.

Mr. Gaudio: No objection.

Mr. Stowell: It is understood, then, Mr. Examiner, that the finalized version of this——

Examiner Walsh: If a copy of the original letter which was sent can be submitted, it will be identified as EA-324, and will be received in evidence.

And this photostatic copy of the draft, Exhibit EA-323, is received in evidence.

(The document marked as Enforcement Attorney's Exhibit No. 323 was received in [397] evidence.)

The Witness: If it is in my file, I will bring it in the morning.

Mr. Stowell: Thank you, Mr. Nuckton.

(Witness excused.)

Mr. Stowell: At this time I would like to call Mr. Lloyd.

Whereupon,

J. TALMADGE LLOYD

was called as a witness for and on behalf of the Enforcement Attorney, and having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Stowell:

Q. What is your name, please?

A. J. Talmadge Lloyd.

Q. What is your present occupation?

A. I am an office employee of H. H. Cutler Company.

Q. What occupation were you engaged in, in 1948, if you recall?

A. In 1948 I must have become employed by Mr. Reynolds.

Q. Were you ever employed by Western Air Lines? A. Yes.

Q. About how long did you work for Mr. Reynolds? A. About 15 or 18 months.

Q. During your service with Mr. Reynolds, did you ever observe Mr. John C. Barulich in his [398] office? A. Yes.

Q. What were your duties with Mr. Reynolds, very briefly?

A. General office work, record keeping, and

(Testimony of J. Talmadge Lloyd.)

contacting flower shippers to ascertain their outgoing shipments for the day.

Q. Do you have any knowledge of the circumstances which resulted in Mr. Barulich's becoming associated with the operation? A. Yes.

Q. Will you state what those were?

A. Mr. Reynolds employed Mr. Barulich as sales and public relations man.

Q. How do you know that?

A. Just from discussion with Mr. Reynolds.

Q. Did you observe Mr. Barulich in action?

A. I do not believe Mr. Barulich and I ever called on any accounts together, if that is what you mean.

If you mean did I observe him working in and out of the office, yes.

Q. Do you know whether Mr. Barulich did any soliciting of persons to either become members of Bay Area, or to ship via Bay Area?

A. Yes, he did. I think that was part of his duties, yes.

Mr. Gaudio: I ask that the answer be stricken.

Mr. Stowell: I do not want you to think, I want you to [399] tell me what you actually know, insofar as you were able to see from your observation, or hear.

Examiner Walsh: Just what do you know personally, from observation?

The Witness: Yes, that was my understanding of his job, and I am quite sure that he did that.

Mr. Stowell: I have no further questions.

(Testimony of J. Talmadge Lloyd.)

Examiner Walsh: Cross - examination, Mr. Gaudio.

Cross-Examination

By Mr. Gaudio:

Q. Who gave you that understanding, Mr. Lloyd?

A. Mr. Reynolds, my employer, and my association with Mr. Barulich.

Q. From the way you saw him come to and from the office, and the conversations that he might have had in your presence, either with Mr. Reynolds, or on the telephone, it is your understanding or observation that he was soliciting either new memberships or other shippers to use Bay Area's facilities; is that right? A. Yes.

Q. When did you first observe Mr. Barulich in any capacity at Mr. Reynolds' place of business?

A. I do not remember the time.

Q. You say you were the office man for Mr. Reynolds? A. Yes. [400]

Q. Where?

A. At the San Francisco Airport.

Q. When did you first go there, to that particular place?

A. I do not recall just when I did go to work for Mr. Reynolds, but it was whatever time I went to work for Mr. Reynolds.

Q. Did you ever work for him in Redwood City?

A. No.

(Testimony of J. Talmadge Lloyd.)

Q. When you first went to work for Mr. Reynolds, was Mr. Barulich there then?

A. No.

Q. How long after you first went to work for Mr. Reynolds did you learn or know that Mr. Barulich was employed by Mr. Reynolds in the capacity you stated?

A. It would only be an estimate, that it was probably six months.

Q. Did your duties take you on the road with Mr. Barulich? A. No.

Q. You stayed in the office at all times?

A. That is right.

Q. Did any person that might be classified as a shipper of flowers come to Mr. Reynolds' office and talk to Mr. Barulich? A. Yes. [401]

Q. Were they members of Bay Area, to your knowledge? A. Yes.

Q. Did any non-member ever come to that office at the airport, in your presence, and talk to Mr. Barulich?

A. Non-member of flower shippers?

Q. Yes. A. Not that I recall.

Q. Any shipper of flowers that you ever saw Mr. Barulich talk to, was a member?

A. So far as I recall.

Q. Did any of these conversations by Mr. Barulich take place over the telephone, in your presence?

A. Conversations with flower shippers?

Q. Yes. A. Yes.

Q. Were they also members of Bay Area?

(Testimony of J. Talmadge Lloyd.)

A. At least all I recall were.

Mr. Gaudio: That is all.

Examiner Walsh: Mr. Wolf.

Q. (By Mr. Wolf): Mr. Lloyd, as a part of your duties, did you answer the 'phone in the office and take care of orders for flower shipments from day to day? A. Yes.

Q. Did you from time to time also ring up the flower [402] shippers to ask them if they would have anything for shipment? A. Yes.

Q. Were you familiar with the names of the members of Bay Area? A. Yes.

Q. Did you have a list of their names?

A. Yes.

Q. Do you recall of any occasion of making a consolidated shipment via Bay Area for a non-member? A. No, I do not.

Q. Do you remember shipments for Lee Brothers?

A. No, I do not specifically remember any shipments for them. I remember they were flower shippers, and I remember that they were points of consideration for membership, but I do not remember any shipments for them.

Mr. Wolf: Thank you.

Mr. Gaudio: No further questions.

Mr. Stowell: No further questions.

Examiner Walsh: Thank you. You may be excused.

(Witness excused.) [403]

MATTHEW J. BARULICH, JR.

was called as a witness for and on behalf of the Enforcement Attorney, and having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Stowell: [408]

* * *

Q. So actually in a sense if you haul a box in yourself from the area, consolidate it, and do everything else you are supposed to do with it, you get 60 cents, less five, but if you don't haul it you get 35 cents, less five; is that correct?

A. That is correct.

Q. And you mean that the entire expense that you incur when you bring a box to the airport is subject to transportation tax in the State of California?

A. If you mean that, will this 30 cents be not subject to tax?

Q. I don't know.

A. It will also be subject to tax in this January 1 arrangement, you see.

Q. As a matter of fact, Mr. Barulich, the change was made, wasn't it, because you felt that if you didn't report [555] the whole amount it could be brought up to you that you could be called an airport forwarder, whereas a portion of the money you received was not for forwarding but was for consolidating.

Mr. Gaudio: Just a moment. I will object to

(Testimony of Matthew J. Barulich.)

that as calling for the conclusion of the witness, and for the Board to determine in the light of all the facts.

Examiner Walsh: I think that the witness is well qualified to answer that question.

Mr. Gaudio: That is true.

Examiner Walsh: Because that is a fact that has been already accomplished.

Now, what is the reason for it?

Mr. Gaudio: He has testified as to why he accomplished that fact. Now he is in effect arguing with the witness as to whether in resolving these changes, invoked at the instance and suggestion of the Enforcement Attorney, because he might be an air freight forwarder, regardless of whether he is or whether he isn't. The changes were invoked at the suggestion and instance of the Enforcement Attorney.

Mr. Wolf: I will withdraw that question, and I will ask you this.

Q. (By Mr. Wolf): Was the change in your reporting system to the State of California as to the total amount of money received [556] by you brought about by reason of a conference you had with the Enforcement Attorney of the CAB?

A. You mean in direct connection with transportation taxes?

Q. No, in connection with your reporting of the funds you received, which comes back to the first question I asked you.

(Testimony of Matthew J. Barulich.)

Were you advised to make this change in reporting procedure and report the entire 55 cents as a receipt for transportation of property by the Enforcement Attorney so that it would become in compliance with the Civil Aeronautics Act?

A. Not on that basis, no.

Q. On what basis?

A. Well, the Enforcement Attorney told me, and the members, the Directors of Bay Area, that consolidations as such should be paid for and the expense borne by the shippers. That is what the Directors are trying to do by establishing this five cents, which pays for the consolidation service.

They find now that during these various stipulations and so forth, a period of time elapses, that these charges are not adequate. Five cents possibly will not cover it from now on.

How it is going to be brought about I don't know. That [557] change has not been made.

Although there were stipulations of fact entered into, but not concrete enough to change it.

Mr. Wolf: Mr. Examiner, my question was, were you advised by the Enforcement Attorney to make this change in procedures; otherwise, you might be in violation of the Civil Aeronautics Act?

Now, that is a question and it is simple. Was he so advised or was he not?

Mr. Gaudio: You can state that yes or no, Mr. Barulich.

Examiner Walsh: Let's have an answer, Mr. Barulich. Yes or no should suffice.

(Testimony of Matthew J. Barulich.)

The Witness: I am trying to get back to the Enforcement Attorney's conference with me.

Mr. Stowell: Mr. Examiner, I think the question is simple. Did the Enforcement Attorney advise you to change your method of reporting to the State Tax authorities, so as to be in compliance with the Civil Aeronautics Act?

Is that your question, Mr. Wolf, substantially?

Mr. Wolf: Substantially.

Mr. Stowell: That is susceptible of a very simple answer.

Mr. Gaudio: Answer yes or no, Mr. Barulich.

The Witness: It is no, so far as the association is concerned. [558]

Q. (By Mr. Wolf): Did the Enforcement Attorney advise you that the entire amount received by you—that is, the 55 cents—should be set up as a hauling and terminal expense rather than as a consolidation expense?

A. We were advised that certain expenses should be shown as consolidation expense. Other expenses should be shown for whatever they are.

Mr. Wolf: That is all. Thank you, Mr. Barulich.

Mr. Stowell: Mr. Examiner, in order to get all matters in the executive session that should properly be so, there are two matters that should be mentioned.

One is the certain information which Mr. Reynolds testified on direct, which was entered into the record, except the amounts paid to Mr. Barulich.

(Testimony of Matthew J. Barulich.)

At this time I believe that the amounts should be entered into the record, and without objection from counsel, Mr. Examiner, I believe this information should be entered as the testimony of Mr. Reynolds, as I recall.

Examiner Walsh: You are offering an exhibit at this time? Do you want to read it in?

Mr. Stowell: It should be read, and I will make it available to the reporter to copy.

Examiner Walsh: How do you want it handled?

Mr. Stowell: It should be copied in, as the confidential [559] extension of Mr. Reynolds' testimony when the earlier portion was copied in as his testimony.

Examiner Walsh: The other is public, and this will be in executive session. Very well.

(The information referred to is as follows.)

Reynolds Bros. Checks Payable to John C. Barulich,
Bank of America, Redwood City

| Number | Date | Amount | Endorsed |
|--------|----------|----------|----------|
| 1565 | 12/22/49 | \$ 72.00 | Barulich |
| 1592 | 1/ 4/50 | 73.25 | Barulich |
| 1630 | 1/14/50 | 21.00 | Barulich |
| 1645 | 1/20/50 | 40.00 | Barulich |
| 1670 | 1/31/50 | 150.00 | Barulich |
| 1719 | 2/15/50 | 130.90 | Barulich |
| 1745 | 2/24/50 | 138.30 | Barulich |
| 1759 | 3/ 6/50 | 120.80 | Barulich |
| 20 | 3/22/50 | 64.60 | Barulich |

(Testimony of Matthew J. Barulich.)

| Number | Date | Amount | Endorsed |
|--------|---------|--------|----------|
| 1801 | 4/ 2/50 | 88.55 | Barulich |
| 1816 | 4/12/50 | 146.55 | Barulich |
| 1923 | 5/16/50 | 99.10 | Barulich |
| 1946 | 5/27/50 | 42.60 | Barulich |
| 1965 | 6/ 5/50 | 63.90 | Barulich |
| 2004 | 6/16/50 | 73.95 | Barulich |

* * *

Mr. Stowell: The second item, Mr. [560] Examiner.

Mr. Barulich, did you bring with you your file on the Cereghino letters?

The Witness: I believe I did, yes.

Examiner Walsh: Off the record.

(Discussion off the record.)

Examiner Walsh: On the record.

Mr. Wolf: The question I asked off the record was if this is still part of the executive session.

Examiner Walsh: I believe I stated before that this matter was brought up in the public part of the hearing, as I recall, and I think possibly should be handled in the public part of the hearing.

If we are about to leave the executive session at this particular time, as I assume we are, there being no more questions of Mr. Barulich, there is just one thing that I am disturbed about, going back to this question of the three per cent tax on the 55-cent item.

(Testimony of Matthew J. Barulich.)

The testimony we had, as I recall, was that there was a 60 cents charge which covered transportation charge, plus a consolidation charge.

Now, if a shipper hauled his own products, his own flowers to the airport, that charge was 30 cents and five cents. I am wondering why a transportation tax would have to be charged on that very same item, if this California law does impose a transportation tax as such. [561]

Mr. Gaudio: I might offer in response to that, Mr. Examiner, that the taxing authority will take the agreement between the contract trucker and his principal, and if that agreement establishes a division of a sum specifically allocated to trucking as a carrier, such as Airport Drayage is performing, that sum will be the sum used for tax purposes. And that procedure continued until this change in this accounting procedure.

Now, under that latter procedure, where it is definitely established—and incidentally, because of the suggestion of the Enforcement Attorney—that the only charge properly allocable to consolidation is five cents, the conclusion inescapable to the taxing authorities, is that the 55 cents must be for trucking, and he is stuck with a three per cent tax on it. That is essentially the problem.

Examiner Walsh: Will a charge of five cents cover the consolidation services?

Mr. Gaudio: That is a problem for the Board, and experience only will develop if in fact it will.

Mr. Stowell: Mr. Examiner, I was just thinking,

(Testimony of Matthew J. Barulich.)

how much does Mr. Barulich charge on a direct shipment which, for example, is tendered to Airborne?

The Witness: Right now I can charge anything I please on it.

I will tell you what we do charge. If our truck is out [562] right now picking up one box for Airborne, they pay \$1.03 minimum. It has nothing to do with Bay Area. And for every shipment we are going to bring in to Airborne it is going to be \$1.03 minimum. It may be charged per box, or it may be charged per pound, but we try to use the same set of rates and charges for surface work as the air carriers have listed within their tariff.

Examiner Walsh: I now declare the executive session at an end, and the public portion of the hearing will reconvene.

* * *

Examiner Walsh: Come to order.

Mr. Stowell: Mr. Barulich, how do you charge on a direct shipment on a box which is not consolidated?

The Witness: We have the authority from the Board of Directors to keep the charge uniform.

Now, when we make a direct shipment, as I believe I stated in the prior testimony, in some cases we have to make that air bill copy, and I brought along today, because the Examiner questioned yesterday how we could differentiate between a straight shipment as against consolidations, these manifests here, copies of which I took off of our file to give

(Testimony of Matthew J. Barulich.)

them to you so you could look them over, so you would know exactly what it is we have in mind.

May I give these to the Examiner? [563]

Mr. Gaudio: If it is in answer to this question.

The Witness: Yes, it is relevant to this.

Now, this particular shipment on top here is a shipment to Boston. This might either be brought to the terminal or deposited at the air carrier. In this case the party here took it over to the carrier. We had to make an air bill in the office covering this movement. The charge on that is 35 cents a box, terminal charge.

Now, if I may turn this one over I will give you a better example. This is destination airport, Pittsburgh. We don't have a consolidation there. This party wants this merchandise to go directly to Pittsburgh, so a straight bill would be cut on that.

We can find a better example as we go through here. This calls for Slick, direct to each of these two points. In this case there will not be a consolidation performed on either one of these two shipments, but there will be a straight air line bill cut in our office, you might say in lieu of consolidation service.

Examiner Walsh: Would the air line bill cover both?

The Witness: No, separate for each one.

Examiner Walsh: How do you distinguish between when shipped consolidated and when shipped direct?

(Testimony of Matthew J. Barulich.)

The Witness: If these were consolidated shipments the shipper would insert in the allocated space here for [564] destination airport the break bulk station he wanted to use as far as the air carrier is concerned, and then if these ultimate consignees are not located at the break bulk point he chooses a beyond routing, which is inserted out at the far right. Now, he could put in here a truck line of some type, a rail carrier, a specific train number, another air carrier beyond, or he might check in this column here, indicating a preference for rail service.

As we go through these, here is one for Miami, Florida. There is no consolidation to a point like that, unless they had Chicago, or St. Louis on a beyond carrier.

Now, we know in the morning when Western Wholesale was called on this particular booking they said they had so many boxes going to this point, and they are certain sized boxes, and they wanted a booking on a flight that goes directly in there. In this case it happened to be Flight 918 of American Air Lines, that leaves in the morning. The air bill is cut in the office also. It gives you all the information we need to make up the air bill.

As we go along here you will see that this shipper specifies Indianapolis direct by a carrier. Well, that is an order to put it out that way rather than consolidation.

This is the same condition—Boston direct by Tiger.

(Testimony of Matthew J. Barulich.)

And when we get down here, it shows one going to this point, and specifies the carrier. That is an order. That is [565] not consolidated service. That is a straight billing service. Now, a bill is cut on this carrier's forms and tendered to the carrier, copy of which is returned to this shipper with all extended charges on it.

I just picked a few of these at random, because you had asked the question, and I wanted it clarified in your own mind.

Here is a case where he wanted to prepay this shipment to this break bulk point. He shows the break bulk point. He wants to prepay it. So there is a straight shipment, to be accomplished by any one of four carriers. If we are having a space problem that night we will perhaps use United, or possibly Slick or the Tigers, or even possibly American to that point.

This one here, you see how definite they are on that. There is no other service they want. So the air bill is cut accordingly.

Examiner Walsh: Off the record.

(Discussion off the record.)

Examiner Walsh: On the record.

The Witness: There are many factors taken into consideration on our rate schedule for performing this type of work. One of the big factors is in many cases these shipments are going to make a passenger flight, which actually you might call a scheduled departure, and it takes [566] an expedited service.

(Testimony of Matthew J. Barulich.)

Perhaps I could divide this, and in 50 per cent of the cases one-half of the shipments involved will be covered with an air line air bill that the shipper has made to help us, while on the other hand they are not. And we have to stop and make them—a delay in time and extra cost in trucking back and forth.

So as an overall picture, they felt until such a time as the cartage company in this case is breaking even, this is the charge. Now, this charge is not set to such a point that it can never be adjusted. It is up for adjustment now.

But to clarify the point here, our charge is identical, as authorized by the Board of Directors, for a straight shipment or a consolidated shipment.

Is that clear?

Mr. Stowell: I believe Mr. Barulich should also continue with his discussion about the manifests when there is no indication on the manifest that a shipment is to go direct, as to what happens.

In substance, I would like to have him repeat what he told you off the record, Mr. Examiner.

The Witness: I believe it was in regard to the booking arrangement. I was talking about a specific firm there, when I said that when they are calling for space reservations in the morning they will tell us specifically what merchandise [567] it is that they have that is going to go direct, and space is reserved in accordance with that request.

Mr. Stowell: Didn't you make a general statement thereafter that if for any reason it can't make

(Testimony of Matthew J. Barulich.)

that flight you either consolidate or you dispose of the merchandise by tendering it to an air line in accordance with the objectives of efficiency and saving time?

Mr. Gaudio: I don't remember the witness making that statement.

Examiner Walsh: I think that is getting beyond my question. My question related only to how Mr. Barulich could determine from a manifest received from the shipper whether it should be shipped direct or consolidated with other shipments. In other words, I believe the point you raised, Mr. Stowell, was explained yesterday.

Mr. Stowell: Mr. Examiner, don't you feel that the statements he made, which could be verified by the several persons present here, should go into the record? I heard it very specifically.

Mr. Gaudio: I object to counsel calling Mr. Barulich in general session—I assume we are in general session now—and asking him any questions he wants to. Mr. Stowell purported to use a form of a statement which he believed Mr. Barulich made. I don't think Mr. Barulich made it in that form, or used those words. I don't mean to imply that you [568] should not examine him on that point.

Mr. Stowell: Mr. Examiner, I move that you direct Mr. Barulich to repeat for the record substantially the words which he used to you during the off-the-record discussion.

Mr. Gaudio: I object.

(Testimony of Matthew J. Barulich.)

Examiner Walsh: Most of them are already on, except with respect to this one manifest that Mr. Barulich referred to, and that is the time when I asked the reporter to stop taking notes.

The Witness: I can clarify his question very easily.

Mr. Gaudio: He hasn't asked a question. I don't know what the statement was, don't know whether it is material, don't know whether the Examiner is interested in it.

Mr. Stowell: I merely would like to have Mr. Barulich repeat for the record the statements he made to the Examiner off the record, which were substantially in discussing the manifests one of the manifests that had a direction on it "Ship Tigers for sure," and you said there was a manifest where the shipper really wanted to make sure it goes via that carrier, and then you said that in some instances where for some reason or other space difficulties arise on the carrier, you would tender it to any other carrier, keeping in mind time and efficiency and cost—or substantially those words. [569]

The Witness: That is true. I would like to add that there was one referring to a shipment to Philadelphia, where the account did not specify a carrier, and I said that it could go by any one of four. We could then use our own discretion and judgment, bearing in mind certain factors—namely, efficiency, speed, cost, and space allocation. We had that little fluctuation.

(Testimony of Matthew J. Barulich.)

Mr. Stowell: That is what I want in the record.

Examiner Walsh: You got that on the record yesterday, I feel pretty sure of that.

Mr. Stowell: That satisfies me.

Mr. Gaudio: There is one other element, I think in answer to your question, that I would like to ask Mr. Barulich.

In these directions that are contained on the manifests which have just been referred to, is it essential that the driver of the truck be aware of those routing instruction forms of the shipper?

The Witness: Yes, by all means. That is one of the toughest parts of this business, in sending a green man out. You can't send what we commonly classify as a truck driver out to pick up flowers. He gets out to accounts, and he is tendered shipments such as those in that file, and he has to follow very closely the instructions. He has to check them onto the truck. He has to make arrangements when he is [570] loading the truck for efficiency in off-loading, and at the proper carrier. It takes quite a bit of telephone communications to central headquarters, such as the office, to find out what arrangements, if any, are made to accommodate shipments of this type.

Usually, if they are booked and space reservations taken to cover them, the men go out with a pickup sheet that has a breakdown on it showing the amount of boxes booked, and to where space reservations have been made.

(Testimony of Matthew J. Barulich.)

Examiner Walsh: I think we have enough on that subject, gentlemen.

Mr. Stowell: Will the examiner hear any more tomorrow?

Examiner Walsh: I think we have enough on that point.

Mr. Wolf: Could Mr. Barulich be asked to bring those manifests that you are examining back at the next session?

Examiner Walsh: Yes, I believe you do have cross-examination on that point.

Mr. Wolf: Thank you.

Mr. Stowell: And I would like to ask that Mr. Barulich bring the Cereghino file with him.

The Witness: Are you going to return it to me?

Mr. Stowell: Yes, here it is. Will you bring that in tomorrow?

The Witness: Yes.

Examiner Walsh: Do you have more [571] examination?

* * *

JOHN C. BARULICH

was recalled as a witness for and on behalf of the Enforcement Attorney, and, having been previously sworn, was examined and testified further as follows:

Further Direct Examination

By Mr. Stowell: [577]

* * *

Q. What happens if there is any difficulty in

(Testimony of John C. Barulich.)

the collection? With whom will the consignor communicate?

A. The consignor in the past has communicated with both Bay Area and the direct carrier. In some cases, if the shipment was tendered to the Bay Area outlet, such as on these manifests, he might not be in a position to know by which carrier it moved, so he would have to justify the movement, and if requested, the Bay Area Office might have to follow up the C. O. D. collection in behalf of the consignor.

Q. On Claims, Mr. Barulich, have there been any occasions when a consignor here would contact you with respect to a direct shipment which moved over the Bay Area service? A. Yes.

Q. Did you follow the same procedure for such shipment as you did for a shipment which moved as part of a consolidated shipment?

A. No, you couldn't because you wouldn't have the same records. The general operation, if a claim was instituted, would be practically the same in both cases, with the exception that our Bay Area records might not have original documents, such as the air bill, manifest, and what have you.

Q. I would like to go back once more to the basic procedure. As I recall, I previously examined you about direct shipments insofar as the manifests were concerned. What happens if, for example, Western Wholesale calls you in the [579] morning, and they tell you that they have a number of boxes going to

(Testimony of John C. Barulich.)

various destinations? With respect to some of the boxes, will they indicate that they are going straight, if they want those boxes to go straight?

A. In this manner they might do that. All the shippers are acquainted with the consolidation points. If they have a shipment going to other than a consolidation point and they want air service to that point, they will indicate it in the booking—such as three boxes for Boston, one for Connecticut. How should I route that? Maybe the Connecticut box will go in the New York consolidation, and the three boxes to Boston will go direct to Boston.

Or, there may be three boxes to Miami, and they may say they want that on Flight 918, so we record it that way and reserve space in accordance.

Q. Suppose that a shipper indicates a consolidation point to you and it turns out that you don't have enough boxes to be consolidated to that point; then, what do you do?

A. I believe we covered that.

Q. You will ship that on direct?

A. It all depends on the type of merchandise. The general instructions we have from the particular shipper such as the perishable nature of the commodity, whether it would withstand a longer transit time. By that I mean, being possibly put into a consolidation at a further station, which may take [580] more time, and then back hauled or some such arrangement. Or, in the case of a high valued shipment, cut flowers, that would usually go direct.

(Testimony of John C. Barulich.)

We have a working policy arrangement with each one of the various shippers, and they just state their request. This holds true, possibly, for most of the consignment houses. They ask us that when we might end up in our accumulating consolidations if their box should happen to be a one-box lot going to a break bulk point, some of them have asked to be notified so that they could either change the consignee, thereby putting it into a consolidation station, or be given the privilege of rerouting it to another break bulk point. Or, in some cases, we have open authority to route all of these shipments into a consolidation rather than a direct shipment, and pay that excessive high charge.

Q. I show you Exhibit No. 295, Enforcement Attorney's Exhibit 295, which has been previously admitted in evidence. When this manifest is turned over to your driver, what portions of that manifest are filled in?

A. In this manifest before us, the portion filled in by the shipper is only the typewritten part indicated here. Anything written, such as these charges here, which are advance charges, such as this designation for grouping, this mark here, the wording here, and this rate one five one naught here, the "straight" indication here, the dimensional weights, those have [581] been done by Bay Area personnel.

Mr. Stowell: Mr. Examiner, is it agreeable with you to temporarily interrupt Mr. Barulich to put on Mr. Swanson for a few moments, and then we can send him home?

(Testimony of John C. Barulich.)

Is that agreeable with you, Mr. Gaudio?

Mr. Gaudio: That would be all right.

Examiner Walsh: Very well. [582]

* * *

Q. (By Mr. Stowell): In your opinion, Mr. Barulich, as you understand your arrangements between yourself and the Bay Area group, do you receive any compensation for your activities as Executive Secretary?

A. As direct salary or to cover the services of Executive Secretary, by check or by any other means, from Bay Area?

Q. In any form.

A. No, other than that described in that Agreement.

Q. As you receive the arrangements between yourself and Bay Area, do you receive compensation in any form for your services as Supervisor of consolidation work?

A. Only what is covered in that Agreement; nothing other than that.

Q. Mr. Barulich, did you bring with you the folder on the Cereghino letters?

A. Yes, I did.

Q. Mr. Barulich, did you, on November 2, 1951, write a letter to Mr. Edward Cereghino, 45 West 28th Street, New York 1, New York, as follows:

“Dear Ed:

“Now that your busy season is approaching, we, too, are going to add a little work for your already busy day.

(Testimony of John C. Barulich.)

“Ed, we are having a hell of a time in Philadelphia. Our [590] present trucker, who is also the trucker for Slick, is not doing a good job. He lets the flowers lay for a day before he comes out to the airport to get them. Airborne gets his delivered as soon as the plane hits. Airbone, as you possibly know, has Bernacki doing his work for him. When I was back there in June, I had quite a talk with Bernacki. He was ready to take us on, but then at the last minute he told me it would have to be approved by Airborne. Of course, I told him not to bother, to take his time to contact Airborne.

“We have had several routing orders against our service into Philadelphia. Consequently, we do not look for help in this respect. Do you think you can do the following job for us: Contact the big florist houses in Philadelphia, and see if they can put some pressure on Bernacki to handle all the flowers in Phily. In that manner, he will have to handle ours. His service is by far superior to our present trucker. Our people have written to some of their outlets and asked for their support, but as yet no results.

“Our Board of Directors has approved any expenditures you will undoubtedly have in doing this contact work for us.

“The Tigers have a trucker, Shannahan Trucking Company, who has bid in for our business. Our problem is the week-end shipping. Most of the union truckers will not come out over the week end, and we lose one to two days.

(Testimony of John C. Barulich.)

“I would like to hear from you, and any comments you may [591] have regarding the Phily area.

“With best personal regards, I remain.”

Mr. Barulich, would you please answer my question? Did you write that letter to Mr. Cereghino on November 2, 1951?

A. Is that the date of that letter?

Q. Yes. I will show it to you.

A. I wrote the letter on November 2, signed by Consolidated Flower Shipments, Inc., John C. Barulich, Executive Secretary, yes.

Q. On November 23, 1951, did Mr. Edward Cereghino write you a letter addressed as follows—

Mr. Examiner, is it agreeable to have the Reporter just copy this into the record?

Examiner Walsh: As long as Counsel has been given an opportunity to read it.

Q. (By Mr. Stowell): Will you adopt as your testimony the copy which the Reporter will make in lieu of my reading it?

Mr. Gaudio: We have no objection to transcribing this letter into the record, if that is the purpose. I assume this is to be followed by Mr. Cereghino's reply.

Examiner Walsh: You heard the other one read, did you not, Mr. Wolf?

Mr. Wolf: Yes.

Mr. Stowell: Mr. Gaudio, do I have the same

(Testimony of John C. Barulich.)

agreement on [592] these two documents, that they be copied into the record?

Mr. Gaudio: No objection.

Mr. Stowell: Mr. Examiner, for the record, I would like to identify these various letters as follows, some of which is in repetition of what I said earlier:

The letter of November 2, 1951, signed by Consolidated Flower Shipments, Inc.-Bay Area, John C. Barulich, Executive Secretary.

The letter of November 23, 1951, signed by Edward Cereghino, to Consolidated Flower Shipments, Inc.-Bay Area.

Two letters, both dated December 8, 1951, signed by Edward Cereghino, one letter of which was addressed to Consolidated Flower Shipments, Inc.-Bay Area, and the other of which was addressed to Mr. Tony Bernacki and Peter A. Bernacki, 222 Spring Garden Street, Philadelphia 23, Pennsylvania.

(The letters above referred to are as [593] follows.)

“Nov. 23, 1951.

“Consolidated Flower Shipments, Inc.-Bay Area,
“San Francisco Municipal Airport,
“South San Francisco, Calif.

“Dear John:

“Your letter of the 2nd inst. explaining your problems with the Philadelphia’s deliveries and

(Testimony of John C. Barulich.)

asking for my help in that connection was duly received.

“I regret that I didn’t get a chance to write you any sooner, however, I want you to know that I have spoken (over the phone) to several of the Philadelphia wholesalers and told them what they should do to obtain better service there and get the benefits of the cheaper rates on Bay Area Consolidation, as compared to the other outfit. They all said they would see what they could do but other than that, at this time, I can’t tell you.

“This coming week I will manage to go to Philadelphia and spend 2 days there. I expect to call on Bernacki myself and see if I can’t sell him the idea of handling all of the California’s flowers shipments, along the same lines that Cosmar is doing here. This would certainly be in his own interest and I do not see why he shouldn’t do so, unless Airborne have him on their payroll as an employee.

“I’ll see what I can work out and what other angles can be worked, if this fails, and advise you as to what results, or recommendations I’ll have to make. [594]

“Please excuse me for not not writing sooner. I had intended to go to Philadelphia before this, but I couldn’t make it.

(Testimony of John C. Barulich.)

“Glad to hear that the CAB deal is winding up and that matters look O.K. for Bay Area.

“Kindest regards and best wishes,

“/s/ EDWARD CEREGHINO.”

* * *

“December 8, 1951.

“Consolidated Flower Shipments, Inc.-Bay Area,

“San Francisco Municipal Airport,

“South San Francisco, California.

“Dear John:

“With further reference to your letter of November 2nd and my letter to you of November 23rd:

“As Jim Bonaccorsi undoubtedly reported to you, some 15 days ago I called on the phone in Philadelphia Mr. Tony Bernacki and had a long conversation with him over the matter of the deliveries into that City. Mr. Bernacki had promised to let me know something definite within a few days, however, up to this writing, nothing has been heard from him. I have therefore sent him today a letter, copy of which is attached herewith. He might have contacted you direct, since I had given him full details, etc., but if he had done so, I imagine that you'd have informed me. At any rate, I intend to

(Testimony of John C. Barulich.)

go to Philadelphia and call on him, probably next week if I can make it.

“Kindest personal regards.

“Sincerely yours, [595]

“/s/ ED CEREGHINO.”

* * *

“December 8, 1951.

“Mr. Tony Bernacki,

“Peter A. Bernacki,

“222 Spring Garden Street,

“Philadelphia 23, Pennsylvania.

“Dear Mr. Bernacki:

“Two weeks ago I had a conversation over the phone with you during the course of which it was discussed that it was my pleasure as well as the Philadelphia’s Wholesale Florists that you should handle the pick-up and deliveries of their Flowers shipments coming into Philadelphia on the Consolidated Flower Shipments, Inc.- Bay Area, San Francisco, Cal.

“It was my understanding that you were interested in the operation and you promised to look into the matter and advise me as to what your decision would be.

“Inasmuch as I haven’t as yet received a word from you one way or the other, I am still unable to report to my Principals, the Golden Gate Wholesale

(Testimony of John C. Barulich.)

Florist, Inc., in San Francisco, who are one of the members of the C.F.S., Inc.

“I would greatly appreciate hearing from you on this subject at the earliest possible convenience.

“Awaiting your advises, I remain

“Very truly yours, [596]

“/s/ EDWARD CEREGHINO.”

* * *

Q. Amling Floral Supply?

A. Amling Floral Supply, yes.

Q. Mr. Barulich, do you keep any record of the shipments made by various members throughout a period of time, such as a year? A. No.

Q. Do you, or, in your knowledge, the Board of Directors examine shipment records of Bay Area to determine whether the persons listed on a membership roster are in fact making use of the Bay Area service?

A. I have to report as Executive Secretary to the Directors that such is being done under my supervision. In other words, I am instructed by the Board of Directors to see that no non-member ships with Bay Area. That is my responsibility to the Directors.

Q. Can you tell me whether at the time of the preparation of this roster, which is dated February 9, 1951, you made any determination as to whether any of the persons listed on this roster in fact were

(Testimony of John C. Barulich.)

or were not shipping via Bay Area for any recent period prior thereto?

A. The only determination I made in computing and compiling that roster was whether or not they were members in good standing. By that I mean did they pay their dues. There was no fact entering into the picture of whether or not they used the privileges. [610]

Q. Is it true, Mr. Barulich, that at the time you prepared this roster the California Floral Company had not used the Bay Area service for at least a year?

Mr. Gaudio: Who?

Mr. Stowell: The California Floral Company, if you know.

The Witness: I can't say that they hadn't used it for a year, but I can say they possibly were not using it at the time that roster was developed.

Q. (By Mr. Stowell): The Boodel Company?

A. That I cannot answer, because that has been and off and on arrangement.

Q. Davidson and Matraia?

A. No, they were not using it.

Q. Kearns Floral Supply?

A. That is an off and on case. I do not know.

Q. Wong Wholesale Florist?

A. He wasn't using it at that time.

Q. Stonehurst Nursery?

A. I don't believe he was using it, either.

Q. Amling Floral Supply?

(Testimony of John C. Barulich.)

A. He was on and off. I don't know if he was using it at that time or not.

Q. Mr. Barulich, is this document which I now show you the document which you made available to me as describing the [611] members in good standing as of this date, with the dates that members were dropped by the Association?

A. I prepared by adjustment and amendment on this list with you in my office, and included certain dates and firms. Yes, I did.

* * *

(The document above referred to was marked for identification as Enforcement Attorney's Exhibit No. 391.) [612]

* * *

Q. Is it true that for a substantial period of time, six months or longer, Bay Area owned in its own name no office equipment other than the fact that it had the use of these few items which you have just indicated?

A. By document, I would say they didn't own anything, but they had the use of a desk that was furnished by the landlord.

Q. Mr. Barulich, can you tell me, in your knowledge, has any application for membership in Bay Area ever been refused?

A. To my knowledge, no.

Q. When was the first occasion when a member was expelled from Bay Area?

(Testimony of John C. Barulich.)

A. To my knowledge, the Board of Directors at the General Membership Meeting of 1951 authorized me as Executive Secretary to bill all members for annual dues. If the dues were not paid, whether or not the member was active, he forfeited his membership, and I was to notify him of such, and I was to report to the Directors as to the dues payments and those members that might be expelled for non-payment.

Q. Is the October 24, 1951, date shown on the membership roster previously marked for identification the first time that a member has been expelled from Bay Area? [618]

A. To my knowledge, yes.

Q. Are you aware that members of Bay Area used the services—and by “services,” I mean consolidation services—of other firms than Bay Area?

A. I am aware that some of the members have, or have in the past.

Q. Are those same ones still doing so now?

A. I believe there are some isolated instances where they do.

Q. Can you tell us which firms, if you know, use—

A. I do. Western Wholesale does. I might qualify my answer on this basis. You said used the consolidation services of some other type of carrier, or their services—period—or both?

Q. Use either consolidation pick-up, or any other service incident to the tendering of a shipment

(Testimony of John C. Barulich.)

in California and receipt thereof on the East Coast.

Mr. Gaudio: If you know.

Q. (By Mr. Stowell): If you know.

A. The John Nuckton Company, the William Zappettini Company, the Golden Gate Wholesale Florists, the A. G. Enoch Company.

I don't think of any others at the moment. [619]

* * *

Q. (By Mr. Stowell): Mr. Barulich, did you make a trip to the East Coast last year?

A. Yes, I did.

Q. Did you call upon the following persons: Fetterman, in New York City? A. No.

Q. Rutig, Gaston and Costa? A. No.

Q. Linwood Wholesale in Detroit?

A. Yes.

Q. What did you discuss with Linwood Wholesale in Detroit?

A. I discussed a letter that Linwood Wholesale had sent to one of our members, wherein they requested certain information as to just what Bay Area was. This letter had to do with a prior conference they had with Mr. McPherson of Airborne, who, according to this letter, stated that Bay Area in realty was Zappettini, and that the Rule 65, which covers the collect distribution and the charge pertaining to it, was merely a subterfuge small-time grab.

I was sent there also in behalf of Mr. John Nuckton of the John Nuckton Company, to speak with Mr. Potter. Prior to my arrival in Detroit, Mr.

(Testimony of John C. Barulich.)

Nuckton had sent a letter to this [624] gentleman advising him of my coming there to discuss various matters, one of them being a trucking arrangement to cover their flowers from the airport.

Q. Just the Nuckton flowers only?

A. No, the Nuckton flowers and Bay Area flowers into that area. At that time, we had no contract agency.

Q. Did you call on the Detroit Flower Growers in Detroit? A. I did.

Q. What did you discuss with them?

A. All calls other than the Linwood call were just a "Hello" call, you might say, just to meet them.

Q. Is the Detroit Flower Growers a consignee of Bay Area members, to your knowledge?

A. Bay Area members do ship to that house.

Q. Did you call on the Detroit Florists' Exchange? A. Yes, I did.

Q. Is that company a consignee of Bay Area members? A. Yes, it is.

Q. What did you discuss with them?

A. Just general.

Q. Did you call on the Amling Store in Detroit?

A. I believe I did.

Q. What did you discuss with them?

A. Just a "Hello" call, general. I might add that in [625] Detroit one party, like the Detroit Florists' Exchange, took me over to the Detroit Flower Growers and introduced me as John Barulich who is associated with the Bay Area group, as

(Testimony of John C. Barulich.)

they called us, and they all had several comments and questions regarding Airborne's charges, and they asked me to explain them. And, wherever I could, I did.

Q. Did you also explain the Bay Area procedures?

A. When I was asked about them, I gave answers, yes.

Q. Did you call on the Floral Supply Company of Detroit? A. I believe I did.

Q. Is the Floral Supply Company a consignee of Bay Area members?

A. If my memory serves me correctly, I believe that name has been changed, but, when they operated under that name, Bay Area members did ship to them.

Q. What did you discuss with the Floral Supply Company? A. The same, general.

Q. Did you call on the Michigan Cut Flowers Company?

A. I don't remember that name. I might have.

Q. Did you stop over in Kansas City?

A. Yes, I did.

Q. Did you call on Stuppy?

A. I was taken in and introduced to Mr. Stuppy, yes.

Q. What did you discuss with Mr. Stuppy?

A. When I was there, it was in relation to inspecting [626] shipments of members as to the condition when they arrived.

I might add that that was one of the items I was to check with the trade; the general condition of

(Testimony of John C. Barulich.)

arrival, as to air carriers' handling and co-operation, and the actual condition of the flowers, and boxes, and icing, and so forth, and, in Kansas City, I happened to be there when several boxes were brought in that were given to this account on a salvage basis because of the fact that they were so damaged in transit they couldn't be forwarded to the ultimate named consignee on the air bill. [627]

* * *

Mr. Wolf: Mr. Examiner, I would like to interpose the usual objection here, that the answer at present is not responsive to any question. It is a discussion of what goes on at St. Louis. The question was what he discussed with a certain gentleman.

Mr. Stowell: Let him continue, Mr. Examiner.

Examiner Walsh: Continue, Mr. Barulich.

The Witness: Of course, we talked about the subject of damage, and they went into great length about schedules, and so forth, and felt that they weren't getting service that they should get. They wanted to know what we were doing as regards our group shipping into an area such as that. That was quite a long discussion on that.

Q. (By Mr. Stowell): Did you call on Mr. Geddes in St. Louis?

A. I am not sure. I don't believe I did.

Q. Did you visit in New York?

A. Yes, I did.

Q. Did you call on Mr. Cereghino?

(Testimony of John C. Barulich.)

A. I had a visit with Mr. Cereghino while I was there. He called on me.

Q. What did you discuss?

A. He had an interest in Bay Area's operation, inasmuch as [628] the dollar and cent picture was involved, and it is my understanding that prior to Bay Area's inception he was trying to formulate a plan of a receiver's type association to do the same thing that Bay Area is doing here. He wanted to do it back there. And he had several questions regarding the prehearing conference, and wanted to know if there was anything he could do in behalf of himself as a sales representative for flower shippers, and in behalf of the industry in general, if he could help in any way. We had quite a lengthy discussion regarding those facts.

Q. Did Mr. Cereghino give you names of flower firms in New York City? And suggest that you call upon them?

A. No, he did not.

Q. Did you call upon any other flower firms in New York City?

A. I didn't call on any flower firms in New York City.

Q. Did any flower firms call upon you, other than the names Fetterman and Rutig, Gaston & Costa, which I have mentioned?

A. They didn't call on me.

Q. I mentioned those as flower firms in New York.

A. To my recollection, I called on no flower firm

(Testimony of John C. Barulich.)

in New York, and no flower firm in New York called on me.

Q. In your discussions with Mr. Cereghino, did you discuss with him about the possibility that he might mention Bay Area in his solicitation of sales of flowers in New York and on the East [629] Coast? A. No. [630]

* * *

Q. Mr. Barulich, do you have with you your conditional sales contracts respecting the trucks which you purchased? A. Yes.

Mr. Stowell: Mr. Examiner, I have before me conditional sales contract, Purchaser John C. Barulich, dated October 15, 1951. I would like to have the witness read from the purchaser's statement.

Will you please do so, Mr. Barulich?

The Witness: I will quote the purchaser's statement, which is printed by someone, and signed in the hand of John C. Barulich.

Q. (By Mr. Stowell): Is that, in fact, your signature?

A. This is my signature here. This is not my printing.

Q. But you did sign it. Is there a certification?

A. This says, "Purchaser sign here."

Q. And your signature is underneath the statement: "For the purpose of securing credit, I, or we, make the above representations and request the placing of insurance coverage and the financing of

(Testimony of John C. Barulich.)

insurance premiums as shown in this statement of transaction." [636]

Would you please read from that statement, Mr. Barulich?

A. It says, "Employed by," and it is filled in, "Self, Airport Drayage Company."

The form then says, "Address," and it is filled in, "1717 Belmont."

The form says, "City," and it is filled in, "San Carlos."

The form says, "Years," and it is filled in, "One and a half."

The form says, "If self-employed, state kind of business," and it is filled in, "Air freight forwarding."

Q. Thank you. Mr. Barulich, I am going to ask you some questions about the disbursements made by Bay Area, and you may care to refer to your ledger book. They will be of a general nature, however.

Are claims settlements disbursed by Bay Area on Bay Area's checks? A. Yes.

Q. C.O.D. collections?

A. They are not handled through Bay Area. They are handled direct with the member shipper. The contract with an agent, if it is consolidated, specifies the C.O.D. remittance will be made directly to the shipper as shown on the manifest, and, if it is a straight shipment, Bay Area has no connection with it other than a trucker to the airport.

(Testimony of John C. Barulich.)

Q. Supposing it is a consolidated [637] shipment?

A. I said, if it was a consolidated shipment, the break bulk agent is contracted to remit directly to the shipper on the manifest. That would be the member shipper.

Q. How long has this been in effect?

A. I have never known there to be any other form of procedure.

Q. Mr. Barulich, does check No. 201 of the Bay Area checkbook show a C.O.D. payment to William Zappettini Company? A. Yes, it does.

Q. Would you care to explain your earlier testimony on that?

A. Yes. If my memory serves me correctly, this check was made out to Bay Area instead of Zappettini, so it was banked in the Bay Area account and withdrawn in favor of William Zappettini Company, just as a clearing house, you might say, in that case. It refers to Air Cargo Terminal, which would be the agent in Kansas City. It refers to the air bill that carried that particular C.O.D., and the date.

Q. I show you check stub for check No. 204, dated May 8, 1950, being described as C.O.D. collections, Golden Gate Wholesale. Would you explain that, please, and also check stubs Nos. 205 and 206.

A. Check No. 204 covers the payment of C.O.D. collections in behalf of the Golden Gate Wholesale in the amount of \$409.94. Check No. 205, issued

(Testimony of John C. Barulich.)

May 8, 1950, covers C.O.D. collections [638] made payable to the California Floral Company, in the amount of \$104.45. Check No. 206, issued June 16, 1950, covers the payment of a C.O.D. collection to William Zappettini Company, subject, shipment in question, moved on Tigers' air bill 49894, in the amount of \$41.18. Check No. 208, issued July 26, 1950, to the California Floral Company, covering their C.O.D.'s, moving on Slick air bill 1380, in the amount of \$11.00, and Tigers' air bill 39358, in the amount of \$33.50.

Payment received from Wings & Wheels, made payable to Consolidated Flower Shipments, and deposited check No. 208 written in the amount of \$44.50.

Q. Has Bay Area made checks payable to its members involving over-charges by air carriers?

A. Yes.

Q. Did Bay Area make a check payable to John C. Barulich covering an advance on his expenses for his trip to Washington, D. C.?

A. Yes, they did.

Can I refresh my memory?

Q. Yes.

A. Yes, that is the truth—check 226.

Q. Did Bay Area issue a check for purchase of manifests from the Sunset McKee Company?

A. Yes, they did.

Q. Did Bay Area issue a check for payment of

(Testimony of John C. Barulich.)

attorney's [639] fees for services performed for Bay Area? A. Yes. [640]

* * *

Q. Mr. Barulich, how do you know which carrier's air bill to prepare? Suppose, for example, there are four carriers going to this particular break bulk point?

A. During the course of the day, after we have called or have received calls from the various shippers, this space reservation is made by a certain carrier. The fact that four carriers serve one point doesn't necessarily give you an option to use any one of the four; but, with space being a critical problem, you have got to jockey for position, you might say, to get the merchandise out.

Now, if you have got a big consolidation, you may have to give it to one carrier here and then take three small ones and give them to carriers over here, to equalize the distribution of your tonnage. There are many factors taken into consideration on that, such as one carrier performs the best service.

Now, these are the factors that we are governed by. How close to their schedule do they operate? What type of treatment do they afford this perishable commodity? What type of handling [644] do they give? Do they follow up with the papers? Do they notify the people that it is coming? All these factors. Their equipment. What classification, two-motored, four-motored? Where is it going? Is it going direct? All those factors are taken into con-

(Testimony of John C. Barulich.)

sideration when you are distributing the shipments.

That is how we get to the carrier.

Now, in the evening, let's say, I am working on St. Louis here. The carrier used to St. Louis could be TWA or Slick. We know during the course of the day with which carrier we have reserved space for this amount of boxes. Quite possibly we have reserved space for fifty boxes to St. Louis, and in the accumulation of the manifests we discover that we have got seventy. Then, we have to go through all of them and set them up quick to determine exactly the amount of boxes we have. Then we go to the carrier to determine how close we are going to be to our estimated request for space reservation. If we find we are running over on Slick by thirty-five boxes, we call them immediately to find out if they can handle it. If they say, "No, we are sorry; we have accepted other shipments; we have only reserved so much space for you," then we have to take one of those stations and try to get it out by some other carrier. In other words, it is not a set, tied-down rule. It cannot be.

And another thing that comes into the picture is Slick may call up and say, "We are going to be late with our St. Louis [645] flight."

And we say, "What time? What is late?"

We schedule the departure out of here, we will say, at six in the morning. If we can, we go over to TWA to get that same shipment out. In other words, it is very flexible as to just what is used in determining the routing policy.

(Testimony of John C. Barulich.)

Q. Suppose, for example, you tried to reserve space on a certain carrier and the carrier says, "We are not running a flight today," or "We are all booked solid; we have no space available for you today," and yet some shippers may have requested that you use that particular carrier; then what do you do?

A. We call the shipper, because we would have been advised of that in the morning when we requested space reservation. If the shipper is definite in demanding that his particular shipment go by a certain carrier who has advised us that it would not be acceptable, we tell him. The shipper would usually say to route it in a different manner. If he is hard-headed on the point and says it is going to go that way whether or no, we follow that instruction to the letter, deliver it to the carrier, and we are through.

Now, we are up to accumulating the air bills. We have so many boxes of a commodity in the description end of the air bill, and we have entered so many boxes of cut flowers that have been accumulated over these many manifests. The next procedure is to [646] take the actual weight as given for these flowers. You tabulate that. You tabulate it on a machine. Then it is listed. Then you take the dimensional weight for the same flowers. You list it also on an allocated space on the bill. Then you go through the bill again and take up the number of boxes of decorative greens, list the number of boxes.

(Testimony of John C. Barulich.)

You follow that procedure as in cut flowers, in determining the actual weight as against the dimensional weight. Then the evaluation of the complete consolidation is determined. Then the Bay Area advance is also determined, and put in the allocated space.

Now, from the evaluation, we determine how much has to be purchased to give us a certain amount of coverage for the shipment. Bay Area, being the shipper, the small component parts of the shipment aren't recognized as a shipment, actually; it is just part of a Bay Area consolidation.

Q. What do you mean by excess valuation?

A. Excess valuation is the carrier's terminology by which they assess a certain charge governing the declared value. Different carriers have a different rate of charge. For this case here, I would say that ten cents per \$100 is the charge for excess value.

Now, for every \$100 I declare on the air bill, the shipment that is being given to the carrier is paying, in reality, ten cents for each \$100. That is prorated. We also tabulate on another basis, that the carrier gives you free valuation at [647] twenty cents a pound. We tabulate the tonnage that we are going to pay on, whether it is actual or dimensional; which ever produces a greater revenue for the carrier, that is the way it is extended. Then we accumulate the free valuation, plus what we are buying, and we put it in an allocated space on the air bill, under "Declared Value." That then becomes

(Testimony of John C. Barulich.)

the valuation of the complete shipment. No more; not a penny more than that. Under no circumstances can it be changed.

I failed to mention that in listing the flowers and decorative greens, there is a total drawn then of the two commodities, and a total box figure given to the carrier, and a total of the dimensional weight of both commodities.

Now, in rating purposes, the carrier assesses the charges to the dimensional weight or actual weight, whichever is the greater. In our case, the actual weight is greater than the dimensional weight, and the carrier is going to assess his rates on the actual weight, and right while we are working on this particular consolidation, we go through each and every manifest copy, and if it is going on actual weight there are two lines drawn through the dimensional weight so that the shipper will know that that particular shipment was rated as the actual weight.

If the same consolidation is rated at the dimensional weight, there are no markings of any description, so when the shipper receives his copy of the manifest back the next day and [648] he sees an actual dimensional weight with no lines drawn through it, he knows that shipment was rated at the dimensional weight. If a line is drawn through the dimensional weight, he knows it is actual.

This bill which covers the manifest attached to it, as in this case, St. Louis, is then extended for prorated charges. We charge on the basis of charts.

(Testimony of John C. Barulich.)

We have charts to each consolidation station, and the charts cover the rates and charges by the carrier, including transportation taxes, and it is on a graph scale. The 100-pound rate to St. Louis is a certain figure, and we have a chart for 100 pounds. It goes from one pound to 100, and it shows how much a shipment would be rated for air freight charges if it weighed fifty pounds, or if it was being rated for rating purposes from the manifest at fifty pounds. And if the rate the carrier was going to charge was the 100-pound rate, we then look at the 100-pound rate on the St. Louis charge, go to the fifty-pound entry, assess that charge there, which is inclusive of transportation taxes. That is the first entry against the shipment. That is the air freight rate.

Then an excess valuation is run in to cover that particular shipment. The next entry is the Bay Area advance. That is tabulated, and the figure is put in on the shipper's original manifest in the allocated space—"Adj. Charge"—adjustment charge or advance charge. That is the rating against that shipment.

This is the procedure followed right on through this [649] consolidation. If you come to cut flowers, then you have to assess the cut flower breakdown rate. Now, when these are all extended and rated, tabulated to determine the amount of charges that manifests accrue, the charge might be \$200, our practice in the past was to go to the carrier with

(Testimony of John C. Barulich.)

the bill and the manifest and say, "Extend this bill now to see how close we are." Well, we found that that would take too much time up, because they had other duties to perform, so we, on our own, rate that bill out, not making any entries for our own purposes, to establish how close to \$200 that carrier is going to charge our account. Because, you see, he pays the complete charge to the carrier.

If the carrier bill should tabulate to \$250, and we only have \$200 on the manifest, we start all over again, and determine where the error is. That happens quite frequently. So, we keep doing it until the charges on the manifest are close enough to the carrier's charge, or at least as much as the carrier's charge. If it should be five or ten cents over, we don't care. We let the agent on the other end just take care of that, on the kind of a basis he wants. But, we can never do it on such a basis that the agent on the other end is not going to be able to collect enough money off the manifest to cover the billing that the airline is going to collect from him.

The reason the charges cannot be actual—by that, I mean \$200 on the manifest and \$200 on the carrier's bill—is the [650] transportation tax. You get into twenty-five pounds and eighty pounds here, and 700 boxes, and possibly fifty or sixty cents, but it has to be within reason, so that the consolidation, then, if it proves out—we call this proofing, and, if it is within reason, this consolidation of all the papers attached to the carrier's air bill is delivered

(Testimony of John C. Barulich.)

to the carrier, who inserts in it a carrier air bill number. That air bill number is then taken off that master air bill and entered onto each and every one of the attached manifests. That becomes a permanent record of just how it moved, on what air bill number, and the date is on each one.

The carrier then extends his bill, and gets a charge. These manifests, and the air bills, are split up, then. They go in various directions. The carrier retains one here. The originating carrier retains a copy, and also a copy of the air bill. Bay Area gets two copies back. One copy is returned to the individual shipper, showing the charge. That is all the individual shipper gets, just a copy of his own manifest.

Now, I say, the carrier returns two to Bay Area. I mean two copies of the manifest, one copy of the air bill.

Q. Who keeps the air bill?

A. The Bay Area files have that air bill. And one copy of the manifest is attached to that air bill, which is going to become a permanent record of Bay Area.

The other copies of the manifests are distributed as follows: [651] Two are left. The agent on the other end gets a copy along with the air bill. He uses it as his instructions for forwarding, delivering, and for instructions to collect advance charges due that respective shipment.

The carrier uses the other copy as they see fit,

(Testimony of John C. Barulich.)

either to their general accounting office for accounting, or to the destination station. It all depends on the carrier. They have various ways of doing that. But, out of the five copies, that is where they go.

When the air bills, such as this one, this consolidated shipment, goes out the next morning, a man goes around and picks up from the various carriers all the bills covering movement in Bay Area's account the previous day. Those bills are brought back to the office and recorded. This recording has to do with the number of boxes carried by what carrier, to what break bulk station, and the amount of Bay Area's advances on it. This is a day sheet that is accumulated for every day's business.

At the end of a given time it is reaccumulated, and statements are made to the respective carriers to recoup the advance charges. In the case of straight shipments, those bills are also picked up, but there is only one copy of the air bill that is returned to Bay Area. Bay Area records that air bill in the day file, and returns it to the shipper, thereby having no record of that air bill other than the entry in the day file. [652]

That more or less covers the complete operation, with the exception that the same operation takes place at each break bulk station.

Q. Would you discuss or explain what happens at the break bulk point?

A. The break bulk point, we have arrangements with the carriers to notify our agent of the arrival

(Testimony of John C. Barulich.)

on a specific flight of our merchandise. He is usually performing a service comparable to Bay Area on this side. By that I mean that he is running a specialized service, and he will go out and meet that flight if he can do it. The carrier on the other side is keeping him advised of the estimated time of arrival of that particular consolidation, and he tells him how many boxes are on there from Bay Area for his account.

For instance, in the case of St. Louis, we will say Lukey Transfer used to have advance information that so many boxes were coming to him for distribution from Bay Area via a certain carrier. He would then keep track by the carrier as to when the shipments would arrive, and he will have dispatched trucks to accord an expedited service of delivery.

Now, when the airline finally makes delivery to this agent, they also deliver the copies of the manifest and the air bill. Any signatures for this consolidated shipment are recorded on only the air bill. The manifest copies are for the use of the agent in preparing beyond bills or preparing [653] a trucker's delivery statement, which he transfers certain information from the manifest over to his billing copy, showing the advance charges, adding it, and that becomes a bill to the ultimate consignee, if he is within the delivery area of the trucker.

If it covers a beyond shipment, then the trucker consignee follows the routing instructions as indi-

(Testimony of John C. Barulich.)

cated in the manifest. If it is air, he follows it by air. If it shows a requested air carrier, he supposedly does that. If it shows rail, he takes it to the rail terminal.

Q. Does he cut a new bill of lading via air or rail for transshipment?

A. Yes, he does. He becomes the shipper from there. He is the break bulk agent. He becomes the shipper in behalf of Bay Area, to forward that shipment.

Any C.O.D. collections noted on the manifest, he is responsible for the collection and remittance to the shipper.

Also, there are stipulations within the contract. The stipulations, or agreements, within the contract with this agent trucker indicate that in the event shipment is delayed and refused by the consignee, he is to contact the individual shipper by collect wire for disposition. If any C.O.D. is refused, he is to contact the original shipper for disposition. In other words, he works in with the individual shipper.

* * *

Cross-Examination

By Mr. Gaudio:

* * *

Q. There was no stipulated compensation either under the [671] Agency Contract or the Traffic Manager Contract?

(Testimony of John C. Barulich.)

A. The Traffic Manager Contract there was stipulated a price per box.

Q. And what was that price?

A. Ten cents per box; derived from boxes hauled, ten cents per box, and boxes delivered to the airfield, five cents per box.

Q. That was under Reynolds' operation?

A. That is right.

Q. But in so far as your formal status as agent receiving or accounting for funds belonging to Bay Area as principal, no account has ever been stated?

A. No.

Q. The correspondence which issued to Cereghino, which is copied into the record—by that I refer to the letter dated November 2, 1951, signed "Consolidated Flower Shipments, Inc., John C. Barulich, Executive Secretary"—of which this is a copy, and which has been received in evidence, was that original issued over the formal letterhead of Consolidated Flower Shipments, Inc.-Bay Area?

A. Yes, it was.

Q. The Articles of Incorporation and Bylaws of Bay Area, including its former name, did not have any stipulated membership dues, annual dues, or other form of assessment, did it?

A. Not to my knowledge. [672]

Q. Exhibit No. EA 363, to be offered in due time by the Enforcement Attorney, is a certified copy of the Articles of Incorporation. In the inception of the organization under Article X of the By-

(Testimony of John C. Barulich.)

laws, which will be considered as EA 363-A, as to membership, it reads as follows :

“Paragraph 2. Application for membership may be made to any officer or director of the Corporation. Election to membership shall be by the Board of Directors.”

In your experience, since your association with Bay Area, have the members, in so far as new members are concerned, at any rate, been in pursuance of that provision of the Bylaws, to your knowledge?

A. Yes, they have, in every instance.

Q. Since your association in establishing annual dues and assessments for eligibility to membership, that provision has been followed?

A. Yes, it has.

Q. So that prior to the annual dues and assessments rule of Bay Area, any funds paid by any member or prospective member was on some other account; is that right?

A. That is right.

Q. Either as purchaser of materials or capital, or outright capital contribution?

A. That is right.

Q. Since the organization and functioning of Airport [673] Drayage began, has Airport Drayage picked up or handled any shipments for either Piazza, as I believe he was referred to in the testimony, or Lee Brothers Nursery?

A. No.

(Testimony of John C. Barulich.)

Q. You described in some detail, Mr. Barulich, the mechanics of the consolidation and break bulk services available to the members through Bay Area. Will you state in what particulars there has been any change in so far as the personnel performing that service since your initial operation as Airport Drayage?

A. Since the initial operation of Airport Drayage?

The major factor would be its office work and the creating of more personnel, naturally, brought about by all shipments going to an agent rather than on collect distribution, for one thing. The office work has tripled. The accounting features, listing the bills, prorations, and so forth.

Q. Has that in turn caused a demand for additional office and clerical work in the Bay Area facilities at the airport?

A. Yes, it has.

Q. In making their segregations of boxes, either on the truck or at the terminal, is it necessary or advisable for personnel handling such equipment to have a detailed and personal knowledge of the special commodity offered by the particular member?

A. It takes thoroughly trained personnel.

Q. Can you tell us, or have you any way of approximating [680] at this time, how many different species of flowers or decorative greens are handled for Bay Area members?

A. I would be hazarding a guess—in the hundreds.

(Testimony of John C. Barulich.)

Q. And are there only two general classifications, cut flowers or decorative greens, or are there other bases for classification?

A. I know of no other classification covering the flower industry shipping, as far as classification is concerned.

Q. As respects the special type of flower of the particular member of Bay Area, does that have any relation to the particular air carrier, or its flight plan that might be utilized?

A. By all means, it does.

Q. Does the special commodity in question, flowers, decorative greens, have any greater or less effect upon the excess evaluation provision of normal tariffs, of common carrier air freight forwarders?

A. Classification of the merchandise?

Q. Yes.

A. Yes. A box of roses, as an example, you might handle, it would possibly be worth as much as \$150 to \$200, whereas, a box of decorative greens might be worth as low as \$7.00 or \$8.00.

Q. Is that affected in any way by the terms "dimensional" or "actual" weight?

A. Not necessarily. [681]

* * *

Q. In that circumstance, the air bill which indicates the various prorations is put in reverse gear, as it were, and each individual member concerned pays the prorated transportation charge?

A. If made necessary by refusal, yes.

(Testimony of John C. Barulich.)

Mr. Gaudio: I think I have gone through the various points I would like clarified on direct through this form of cross-examination with Mr. Barulich.

Examiner Walsh: Mr. Wolf has cross-examination coming from back at the beginning when Mr. Barulich first started his testimony, so, do you wish to avail yourself of that privilege now, Mr. Wolf?

Mr. Wolf: I do, Mr. Examiner. It has all been covered so thoroughly, I am glad to say there are very few questions.

Q. (By Mr. Wolf): You have discussed with your various agents or truckers at various break bulk points throughout the United States, Mr. Barulich? A. Yes. [684]

Q. In how many cities in the United States do you have agents or truckers with whom you have entered into the agreement shown here as Exhibit No. 140? A. With how many?

Q. What cities?

A. Kansas City, St. Louis, Detroit, Chicago, Cleveland, Philadelphia, New York.

Q. Do some of those truckers handle shipments for Airborne and Freight Traffic, Inc., as well as for Bay Area? A. I believe they do.

Q. Are there some of them who previously handled the shipments only for Airborne?

A. To my knowledge, I don't know of such an arrangement.

Q. You don't know that presently Bay Area has a trucker or an agent in some city in the United States that used to represent Airborne solely?

(Testimony of John C. Barulich.)

A. I don't know that to be a fact.

Q. You don't know that? A. I do not.

Q. Can you give any explanation as to why a trucker was chosen by Bay Area who also handled shipments for Airborne?

Mr. Gaudio: Just a moment. I don't know that it makes any difference, Mr. Examiner, on the question of relevancy to this issue. I mean, one contractor carrier may work for any number of [685] people.

* * *

Q. Would you cover that at this time, Mr. Barulich? To assist you in that connection, assume that the loss or damage is fundamentally the liability of the direct carrier involved, or any connecting carrier by surface or otherwise, but that the loss or damage is sustained on a Bay Area shipment. As between Bay Area and any member of Bay Area on that single shipment, what, if any, responsibility attaches?

A. I might get the liability end of it out of the way. Bay Area has no responsibility or liability under its Articles and Bylaws to the members for the loss. However, trying to recoup the loss, the following procedure has been established whereby the individual shipper upon receiving notice that his shipment or part of a shipment has been lost or damaged, and upon receipt of a carrier's inspection report, builds up a claim file in his office, giving all supporting documents, copies of manifests,

(Testimony of John C. Barulich.)

any air bills he might have, copies of invoices, copies of salvage returns, and builds a picture for the Bay Area operation so far as claims are concerned. Then the claim is sent to Bay Area for processing with the carrier involved.

Bay Area, when it receives this claim, assigns a Bay Area number to it, and checks it completely for information on documents, produces any documents that are needed to follow the claim out and file it with the carrier, such as in the case of [707] a consolidation, a copy of the original air bill that covered the movement. That is attached, signed by the Executive Secretary in behalf of Bay Area, and filed with the carrier.

Any returns come back to Bay Area, because none of these claims are assigned, no interest is assigned, at this time. Any refunds or payments, whatever the case may be, are settled by Bay Area and disbursed on Bay Area's checks.

Q. To whom? A. To the complainant.

Q. A member of Bay Area involved?

A. That is correct, with provision for a deduction of the amount paid to cover the claims handling expense, which would be ten per cent. That is also banked through Bay Area and made payable by Bay Area.

Q. In other words, in that circumstance, Bay Area acts as agent in behalf of the particular member in processing the claim and remitting any payment, if liability is accepted by the carrier?

(Testimony of John C. Barulich.)

A. That is correct.

Q. If liability is denied by the carrier, is there any responsibility for payment of the loss by Bay Area to the member?

Mr. Wolf: Just a moment, Mr. Examiner. I object on the ground that it calls for the conclusion of the witness, particularly a legal conclusion. [708]

* * *

Q. Has this question of the adequacy or inadequacy of facilities, equipment and service made available by surface [710] carriers in destination territory resulted in changes in your contract agents from time to time? A. Yes.

Q. In each instance, has that been with the knowledge, consent, or approval of the Board of Directors?

A. At the direction of the Board, those changes have been made and authorized.

Q. Incidentally, earlier in the examination there was some discussion about your trips to the East. In fact, how many trips have you made to the East, Mr. Barulich?

A. I made one trip to the East as a representative of Consolidated Flower Shipments to attend a pre-hearing conference instituted by the Civil Aeronautics Board in Washington, D.C.

Q. In connection with that visit to Washington, D.C., did you have any instructions from the Board of Directors regarding calling upon your contract

(Testimony of John C. Barulich.)

agents or other representatives in destination territory?

A. I was instructed by the Board of Directors to continue from Washington, D.C., and visit the following stations: Pittsburgh, Pennsylvania, establish an agency there for distribution; Philadelphia, to change agencies; New York, to check on the operation; Cleveland, to check on the operation there; Detroit, to establish an agency; Chicago, to check on the operation; St. Louis, to check on the operation, possibility of [711] establishing another agency there; Kansas City, check on the agency; and back to San Francisco. [712]

* * *

ALFRED G. ENOCH

was called as a witness for and on behalf of the Enforcement Attorney, and, having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Stowell: [713]

Q. What is your name, please?

A. Alfred Enoch.

Q. And what is your business?

A. Wholesale florist.

Q. Are you a resident of San Mateo, Mr. Enoch?

A. No.

Q. What city do you reside in?

A. I live in the County of Santa Clara.

(Testimony of Alfred G. Enoch.)

Q. Did you, on the day of June 29, 1949, make the following announcement to the San Mateo Times? Incidentally, are you acquainted with the San Mateo Times?

A. Yes, I am acquainted with the paper, as a reader.

Q. "Fifteen Bay, San Francisco and Oakland flower shippers have formed a non-profit corporation to consolidate their air shipments and reduce costs; through eliminating many present charges and reducing transportation costs to ultimate consignees, the shippers hope to expand their markets."

A. No.

Q. Would you have any idea how you might have been quoted?

A. No. I really wouldn't.

Q. In other words, you claim that if any such announcement were made to the San Mateo Times on the date mentioned, it was completely without authorization?

A. That is right.

Q. And that your name was selected without any knowledge [714] on your part?

A. That is right. [715]

* * *

Gentlemen, I believe I said before we adjourned last evening that I would leave the parties to the task of determining whether they could agree on a stipulation with respect to certain documents that Airborne would like to present for the record.

Are you prepared to state what the results of your efforts were?

Mr. Wolf: Yes, Mr. Examiner. Mr. Gaudio and Mr. Stowell have agreed to certain stipulations.

Reading now from the complaint of Airborne as filed, it has been agreed by the parties that the following facts may be stipulated:

Airborne Flower and Freight Traffic, Inc., is a corporation organized and existing under the laws of the State of California, having its principal office and place of business at San Francisco International Airport, South San Francisco, California. Airborne is an air carrier operating as an air freight forwarder under a letter of registration issued to it by the Civil Aeronautics Board pursuant to the provisions of Part 296 of the Board's Economic Regulations. Ninety per cent of Airborne's business from the San Francisco Bay Area involves the shipment of flowers in air [722] transportation.

Respondent, Consolidated Flower Shipments, Inc.,-Bay Area, according to statements set forth in its application for an exemption in CAB Docket 5037, is a non-profit California corporation.

Complainant, over a period of several years has built up a substantial business as an airfreight forwarder, a great portion of such business consisting of indirect air transportation of flowers.

That is the end of the stipulation of facts.

Counsel have agreed that there may be admitted as exhibits on behalf of Airborne a mimeographed copy of a letter of registration No. 14, issued by the

Civil Aeronautics Board to Airborne Flower and Freight Traffic, Inc., as an airfreight forwarder, issued November 10, 1948, effective November 15, 1948, and reissued June 30, 1949. And I would request that that be admitted as Airborne's Exhibit No. 1. Copies have already been furnished to counsel.

Mr. Stowell: Mr. Examiner, before you make any ruling I would like to make one comment, please.

I am in agreement with the statement read by Mr. Wolf, subject to the following comment: The statement as read by Mr. Wolf was: "Respondent, Consolidated Flower Shipments, Inc.-Bay Area, according to statements set forth in its application for exemption, in CAB Docket 5037, is a California non-profit corporation." [723]

I would like to modify that slightly to read "is incorporated under California laws as a non-profit corporation." That is without reference of whether it may in fact be non-profit or not, in view of the issues in this case.

Is that agreeable to counsel for the respondents?

Mr. Gaudio: That is agreeable.

Mr. Wolf: That is agreeable.

Examiner Walsh: In other words, you are not making any concessions as to its status apart from the articles of incorporation?

Mr. Stowell: Yes, that is right.

Mr. Wolf: Counsel have also agreed to the introduction of a map of the United States entitled

“System Map, Airborne Flower and Freight Traffic, Inc.,” and I ask that this be admitted as Airborne’s Exhibit No. 2.

Examiner Walsh: The record will show that the parties have agreed to stipulate Airborne’s Exhibits Nos. 1 and 2, the first consisting of the letter of registration from the Board, and Exhibit No. 2 being the Map or chart.

(The documents above referred to were marked for identification as Airborne’s Exhibits Nos. 1 and 2, and were received in evidence.)

Mr. Wolf: The parties have agreed that there may be admitted as an Airborne exhibit a document entitled “Airborne Flower and Freight Traffic, Inc., Personnel Information, [724] February 15, 1952,” which is submitted as Airborne’s Exhibit No. 3.

As to the major issues involved in this matter, Airborne will rely upon the evidence adduced by the Enforcement Attorney.

Examiner Walsh: Does that complete your submission of exhibits?

Mr. Wolf: That completes our case, subject, of course, to any right of rebuttal in regard to new matters which may be brought up in defense.

Examiner Walsh: The record will show that the parties have also agreed to stipulate Airborne’s Exhibit No. 3.

(The document above referred to was marked for identification as Airborne’s Exhibit No. 3, and was received in evidence.)

Mr. Wolf: In addition, we offer as Airborne's Exhibit No. 4 a set of documents entitled "Freight Waybill and Invoice," consisting of a white top sheet, carbon paper, a yellow sheet, carbon paper, and an orange sheet, carbon paper, a pink sheet, a carbon paper, and a green sheet, carbon paper, green sheet, carbon paper, a white sheet, a carbon paper, and a yellow sheet—all attached together, offered as one exhibit.

Mr. Gaudio, do you stipulate to this?

Mr. Gaudio: So stipulated. [725]

Mr. Wolf: Mr. Stowell, do you stipulate to this?

Mr. Stowell: Yes.

Examiner Walsh: Let the record show that Airborne Waybill and Invoice just identified, the parties have agreed to stipulating, as Airborne's Exhibit No. 4.

(The document above referred to was marked for identification as Airborne's Exhibit No. 4, and was received in evidence.)

Mr. Wolf: We also offer as Exhibit No. 5 a document headed "Airborne Flower and Freight Traffic, Inc.", and designated as non-negotiable airbill request and shipping order, consisting of a white sheet, a yellow sheet and a blue sheet.

Is that agreeable to you, Mr. Gaudio?

Mr. Gaudio: So stipulated.

Mr. Wolf: Mr. Stowell?

Mr. Stowell: So stipulated.

Examiner Walsh: The foregoing document is stipulated as Airborne's Exhibit No. 5.

(The document above referred to was marked for identification as Airborne's Exhibit No. 5, and was received in evidence.)

Examiner Walsh: Does that conclude your case, Mr. Wolf:

Mr. Wolf: It does, Mr. Examiner. [726]

* * *

J. D. McPHERSON

was called as a witness for and on behalf of Bay Area, and having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Gaudio:

Q. But it didn't reach formal incorporation?

A. No, sir.

Mr. Gaudio: So that we may follow my examination, at this point I wish to direct my further examination of Mr. McPherson on my case in chief.

Q. (By Mr. Gaudio): What was the purpose of the intended organization of California Consolidators?

A. Airborne had been in operation three years, and along came an organization, Bay Area, and took away a substantial part of our business. We had formerly been an association of shippers, and the Civil Aeronautics Board had had a hearing and we had to participate, and had been told to get a certificate, and had gotten one. Therefore, we thought the Civil Aeronautics Board would be able

(Testimony of J. D. McPherson.)

to tell us whether or not Bay Area could operate as they were, whether we should stay as we were, or whether we could go back to an association such as we had been.

I took a trip to Washington, and I called on seven members of the staff of the Civil Aeronautics Board in 1949, after the formation of Bay Area. We discussed the situation. [735]

At that time it was impossible to arrive at a satisfactory answer.

When I returned from Washington we took the bull by the horns and formed a consolidation arrangement of our own. We formed California Consolidators as a division of Airborne, and began performing consolidation service. We went to the Bay Area people, and asked them if they would join, and most of them did.

Q. When you say "most of them did," when did this request to the people of Bay Area to join California Consolidators take place, when was that made?

A. I wrote Mr. Zappettini, who was president of Bay Area, April 19, 1950.

Q. And is it your testimony that since April 19, 1950, most of the then members of Bay Area joined California Consolidators or this group?

A. The members did not join California Consolidators. The florists got together, as testified a few days past, at the California Floral Company, and discussed the formation of an association to join the two shipping groups together. And it was

(Testimony of J. D. McPherson.)

agreed that Northern California Flower Consolidators should be formed.

Mr. Oren B. Bowdish was elected the executive secretary. Mr. Zappettini was elected president, and most of the members of Bay Area became [736] members.

Q. Of this group called Northern California Consolidators?

A. That is correct. And Northern California Consolidators made a contract with California Consolidators, a division of Airborne, to handle all their consolidation of shipments.

Q. But did any of the Bay Area members join this California Consolidators?

A. No, sir. That was a division of Airborne.

Q. Will you state whether or not California Consolidators, or this group that you proposed to organize at that time was proposed to be limited exclusively to wholesale shippers, or the shippers which were wholesalers of flowers, as opposed to growers of flowers?

A. May I have that question again, please?

Examiner Walsh: Let the reporter read it.

(Question read.)

A. We had no opposition to anyone being members who wanted to ship flowers. The policy, however, was set down by the Board of Directors of Northern California Consolidators.

Q. (By Mr. Gaudio): Is it a fact that the only ones admitted to the service which was proposed to

(Testimony of J. D. McPherson.)

be offered through this guise was limited to wholesalers of flowers rather than growers?

Mr. Wolf: Of which organization are you talking about now?

Mr. Gaudio: The one that Mr. McPherson organized, or [737] initiated and organized. [738]

* * *

Cross-Examination

By Mr. Wolf: [767]

* * *

Q. Mr. McPherson, enlarging on the question of your automotive equipment, could you briefly describe what it consists of—that is, whether there is anything special in the nature of your equipment so far as flowers are concerned?

A. Yes. We discovered several years ago that doing the job on one end is not enough. It must be done on the other end correctly; so, we experimented with various types of trucks that would be suitable for delivering in the cold winter in the East, and also in the heat of summer. We made an arrangement with a body company in the State of Michigan to construct special trucks, especially equipped with 3-inch fiberglass insulation, solid rear doors, heaters, cooling systems, to specially protect flowers for delivery and transfer.

Q. And those are in use today? A. Yes.

Q. You were also asked by counsel on direct examination what the red lines meant on the map,

(Testimony of J. D. McPherson.)

which is your Exhibit No. 2, showing the points of destination and the various areas served by you. I submit to you at this time a document headed, "States and [768] Cities in which Airborne Flower and Freight Traffic, Inc., Gives Regular Service." There then appears on this exhibit a list of states in the lefthand column, the heading called, "Airport, City," and in the righthand column, "Areas Served by Airport City," and I ask you if that is correct? A. Yes, it is.

Mr. Wolf: I ask that this be admitted in evidence at this time as Exhibit No. 7.

Examiner Walsh: The foregoing document will be marked for identification as Airborne's Exhibit No. 7.

(The document above referred to was marked for identification as Airborne's Exhibit No. 7.)

Examiner Walsh: Is there any objection to the admission of these exhibits, Airborne's Nos. 6 and 7?

Mr. Gaudio: No objection.

Examiner Walsh: Hearing none, Airborne's Exhibits Nos. 6 and 7 are received in evidence.

(The documents marked as Airborne's Exhibits Nos. 6 and 7 were received in evidence.)

Q. (By Mr. Wolf): You were questioned on direct examination, Mr. McPherson, as to the number of growers, or various questions as to the growers of flowers who were members of the North-

(Testimony of J. D. McPherson.)

ern California Flower Consolidators, Inc. Can you identify from that list any members who were also members of Bay Area, and, if so, could you [769] read their names?

A. Wholesalers and shippers or growers and shippers?

Q. You can qualify each member whom you name as to that information.

A. Would you mean shippers and growers both with Airborne and Bay Area? Is that what you mean?

Q. Correct.

A. Stonehurst Nurseries, Wong Wholesale, Am-lings of California, Boodel and Company, Bear State Nursery, Bay Road Nursery, Al Enoch, Davidson & Matraia Company, J. Nuckton Com-pany, Mount Eden Nursery, Mountain View Green-house, Peninsula Wholesale, San Francisco Whole-sale, Western Wholesale, Golden Gate Wholesale, William Zappettini Company, Kearns Wholesale, J. L. Mockkin, T. & D. Wholesale, L. Piazza.

Q. Those names you have just mentioned were members both of Northern California Consolidators and Bay Area; is that correct? A. Yes.

Mr. Gaudio: I didn't get the name following Nuckton.

The Witness: I have another list somewhere with some more on it.

Mr. Wolf: What is the name following Nuck-ton?

(Testimony of J. D. McPherson.)

The Witness: Mount Eden Nursery.

Mr. Wolf: Do you have some more names?

The Witness: I think I have. San Lorenzo Nursery and Jack [770] Adachi Nursery.

Mr. Wolf: That is all. Thank you, Mr. McPherson.

Mr. Gaudio: Mr. McPherson, were you reading from some document which was furnished you by Northern California Consolidators?

The Witness: No. This list was taken from Northern California Consolidators, as compared with the Bay Area list that I know of.

Mr. Gaudio: Do you know as of what date this list had been prepared by them?

The Witness: This is not taken from a list.

Mr. Gaudio: As of what date did you subscribe to the membership in both organizations?

The Witness: The question asked me, I believe, if they shipped both with Airborne and Bay Area at various times, and this means at any time.

Mr. Wolf: No, I will correct that. The answer is directed to the question as understood by the witness. My question specifically was, during the period of Northern California Flower Shipments, Inc., what members were members of Northern California Flower Consolidators and at the same time members of Bay Area?

The Witness: Well, I didn't understand—

Mr. Gaudio: I don't think I understood it that way. That was my question.

(Testimony of J. D. McPherson.)

Examiner Walsh: Let's have a correction on that. [771]

Mr. Wolf: Can you answer that question, Mr. McPherson? What I want to know now is what members are members both of Bay Area and of Northern California Flower Consolidators.

Mr. Gaudio: As of what date?

Mr. Wolf: If you can give the dates, not specific dates, but as of what periods of time, it would be helpful, Mr. McPherson.

The Witness: I have a list here. I am not sure of the dates, however. Amlings, Boodel & Company, Al Enoch, J. Nuckton, Mount Eden Nursery, Mountain View Greenhouse, Western Wholesale, Golden Gate Wholesale, William Zappettini, Kearns. That is fairly recent, but I am not sure of the date.

Mr. Wolf: Thank you, Mr. McPherson.

Mr. Gaudio: Do you have a list of that so I can check my notes accordingly? And those members you last named, according to your information, are both members of Bay Area—

Mr. Wolf: Do you understand the question?

The Witness: Yes.

Mr. Wolf: These names you have just read are members both of Northern California Consolidators and of Bay Area?

The Witness: Yes. I am still confused on this. I thought that what we wanted to find out was what members of Consolidated Flower Shipments were also shipping with us.

(Testimony of J. D. McPherson.)

Mr. Gaudio: That wasn't the question.

Mr. Wolf: No. My question was specific: What members of [772] Northern California Consolidators, Inc., are also members of Consolidated Flower Shipments, Inc.—Bay Area?

Mr. Gaudio: Well, that question, then, calls for his conclusion, Mr. Examiner.

Mr. Wolf: If he knows.

Mr. Gaudio: If he knows, he can only know through some official of Bay Area.

What I would like Mr. Wolf to do, if he chooses to do so, is to ask Mr. Barulich if he knows whether any of the members of Bay Area are also members of California Consolidators.

Examiner Walsh: I believe we had some testimony on that before.

Mr. Gaudio: The reason I am raising the point, Mr. Examiner, is that I have serious doubt that if the question were asked in detail that any of the names given are active members of Bay Area, and at the same time active members in any active organization known as Northern California Consolidators.

Mr. Wolf: Do you know that, Mr. McPherson?

The Witness: He is wrong, and this is the answer——

Mr. Wolf: Wait a minute, Mr. McPherson. Do you know the answer to the specific question I asked you?

The Witness: Yes, I do.

(Testimony of J. D. McPherson.)

Mr. Wolf: Very well.

The Witness: This letter was received September 19, 1950, from Mr. Oren B. Bowdish, Executive Secretary for Northern [773] California Flower Consolidators.

Mr. Gaudio: Just a moment now. That was the point of my examination. If you are testifying from what Mr. Bowdish told you, I will object, on the ground of hearsay.

The Witness: As Executive Secretary, he gave me a list of shippers that had been voted——

Mr. Wolf: Wait a minute.

Mr. Gaudio: Is there a ruling on it, Mr. Examiner?

Examiner Walsh: Let's see what the document is.

I believe I will have to sustain the objection. I don't think that this particular document indicates membership in any specific organization.

Mr. Wolf: Very well.

Mr. Gaudio: On that basis, may I ask that the witness' prior statement be stricken, Mr. Examiner.

Mr. Wolf: No. Can I correct that for the record? I am about to do that.

Mr. Gaudio: Let's get a clear record. I would like the previous testimony stricken; if it is in answer to a question to which objection has been sustained, it should be stricken. Then you can start from there.

Examiner Walsh: Let's strike the previous tes-

(Testimony of J. D. McPherson.)

timony, and, if you have any other information you would like to bring out, Mr. Wolf, you may do so.

Mr. Wolf: Very well. [774]

Q. (By Mr. Wolf): Mr. McPherson, in answer to the first question I asked you, which you misunderstood, you read me a list of names. Now, without having to repeat those names, this is the first list you gave me. What do you want to state about that list of names, as you understood it?

Mr. Gaudio: I will object to the question as irrelevant, incompetent and immaterial. It doesn't refer to anything.

Examiner Walsh: I will sustain the objection.

Q. (By Mr. Wolf): Mr. McPherson, have you knowledge of the names of shippers or growers, as the case may be, of flowers, who have shipped at any time through Bay Area and through Northern California Consolidators, Inc.? A. Yes.

Q. Is that the first list of names that you read?

A. No.

Q. Will you give me the names of those who have shipped through both organizations at any time?

A. William Zappettini Company, Golden Gate Wholesale, Davidson & Matraia, L. Piazza, John Nuckton Company, Wong Wholesale, Kearns Wholesale, Boodel & Company, Amlings of California. That is all I recall. [775]

Whereupon:

R. J. ADACHI

was called as a witness for and on behalf of Bay Area, and, having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Gaudio:

Q. Mr. Adachi, what is your residence and occupation?

A. My residence is Mountain View, and occupation is grower of chrysanthemums.

Q. Grower of chrysanthemums?

A. That is right.

Q. How long have you been so engaged?

A. Ever since I can remember; the last ten years, I would say.

Q. Have you in the past found occasion to ship your products by air carrier to the East?

A. Yes.

Q. Are you a member of an organization which has been mentioned here this morning called Northern California Consolidators?

A. No, I am not.

Q. Have you ever been? A. No.

Q. Are you the Jack Adachi that was named in this proceeding? A. Yes, I am. [778]

Q. Did you ever apply for membership in the Northern California Consolidators?

Did you ever ask to be admitted as a member to that group? A. I am not sure.

(Testimony of R. J. Adachi.)

Q. Is yours a sole ownership business, or do you have any partner with you?

A. Right now, I am sole owner, but before I was in partnership with my brother.

Q. Your brother? A. Yes.

Q. What is his name? A. Elnao.

Q. Do you know, of your own knowledge, whether he was ever a member of Northern California Consolidators? A. No, he wasn't.

Q. When did you first commence to ship your products by Bay Area? A. 1947.

Q. By what means of transportation? By which agency did you ship by air at that time?

A. I wasn't a member of anything then, as far as shipping flowers. I just shipped flowers by air the best I can.

Q. And when you say the best you can, what was that in 1947? A. What was that again? [779]

Q. When you say the best way you could, what service did you use in 1947?

A. Slick Airways.

Q. You took your product directly to the airfield, did you?

A. Well, the thing was, in 1947, when I first started shipping, I wanted to ship it all by rail, but then those consignees wanted some boxes by air, so I heard of Airborne's Flower Traffic outfit, so I brought my flowers to San Francisco Airport and asked Mr. McPherson if he could handle those boxes for me, and I was definitely refused.

(Testimony of R. J. Adachi.)

Q. How many boxes did you have in that shipment? A. On that shipment, two boxes.

Q. Have you since that time endeavored to have your flowers transported by Airborne?

A. Yes, there were occasions.

Q. And were they transported by Airborne?

A. Well, I had trouble later on in 1948 again. That was in the first part of August.

Q. What was the difficulty at that time?

A. Mr. McPherson told me he couldn't handle a little guy like me, because he had to look after his big outfits, and he didn't want to lose any of their customers.

Q. Was that the last attempt you ever made to have your shipments transported by [780] Airborne?

A. I might have had some flowers shipped after that, but the dates I wouldn't know.

Q. How many boxes have your shipments averaged? A. By air freight? When?

Q. During the recent past, since you have been using Airborne or any other service.

A. That is pretty hard to say.

Q. Would there be two boxes on the average, five boxes on the average, ten boxes on the average?

A. You mean daily?

Q. Each shipment; what would it average?

A. I would say about an average of five to ten boxes five days a week, during the harvest season. Not all year around, but when I had the flowers.

(Testimony of R. J. Adachi.)

Q. How do you ship when you ship these flowers, on a consignment basis or a straight sale basis?

A. All my shipments are made 100 per cent consignment.

Q. That is an arrangement whereby you send the flowers to your consignee, he sells them, and retains a commission for himself; is that correct?

A. That is right.

Q. How were the transportation charges paid on that shipment?

A. Well, it is deducted from the gross sales.

Q. And charged to your account? [781]

A. That is right. In other words, I pay for all the freight that is paid.

Q. Have you found the use of air freight on a consignment basis, as you have described, an advantage in reaching eastern markets?

A. Yes.

Q. For that purpose, is the landed cost of transportation on your shipments a primary factor?

A. It is, very much.

Q. Have you ever made a study to see in your experience the relative cost of the transportation for shipment as compared to the value of the merchandise in that shipment?

A. What do you mean? Do you mean the percentage of—

Q. Yes.

A. Well, I would say about 20 per cent or 25 per cent. It depends on what you ship, depending on the flowers.

(Testimony of R. J. Adachi.)

Q. In other words, the cost of transportation in your experience averages about 25 per cent of the total cost to the consignee; is that what you mean, or represents 25 per cent of the value of the merchandise? A. Just about, yes.

Q. So that the landed cost of the merchandise in the eastern market has a definite ratio at which making a profit and making a loss would enter into the picture; is that right?

A. That is right, yes. [782]

Q. Are you a member of Consolidated Flower Shipments, Inc.—Bay Area? A. Yes.

Q. When did you first join? Can you approximate the date?

A. Let's see. I think it was November, 1949.

Q. Can you tell us at this time, Mr. Adachi, the cost of your transportation via Airborne prior to your membership in Bay Area as compared to the cost of your transportation via Bay Area?

Mr. Wolf: Just a minute. Mr. Examiner, it is no comparison at all. He is talking about a cost at two different dates. We haven't the slightest idea what the tariffs were at those times.

Examiner Walsh: It is possible to reconcile them by dates.

Mr. Gaudio: Very well.

Q. (By Mr. Gaudio): Can you give us an approximate date as to when you last used the Airborne service before your membership in Bay Area?

A. It must have been some time in 1949. The only thing I can say, they were high.

(Testimony of R. J. Adachi.)

Q. The rate was higher, is that what you mean, or the cost of transportation over all was high?

A. The cost of transportation per box was much higher than I anticipated. [783]

Q. Much higher than the cost per box by Bay Area? A. Yes.

Q. Can you give us any approximation of how much per box it is greater in your experience by Airborne as opposed to that of Bay Area?

Mr. Wolf: Just a minute. Mr. Examiner, I would like comparative dates given.

Mr. Gaudio: Still as of 1949, Mr. Adachi?

Mr. Wolf: What part of 1949? There are twelve months in 1949.

Mr. Gaudio: I believe the witness testified he joined Bay Area in November, so it would be prior to November.

Mr. Wolf: It might have been in January of 1949 that was the last shipment via Airborne, and he might have made his first shipment via Bay Area in November of 1949.

Examiner Walsh: I don't see how we have any basis for comparison.

Mr. Gaudio: Withdraw the question.

Examiner Walsh: I think about the most you could do is to get a general expression from the witness as to whether he found Airborne's charges higher or lower than Bay Area's.

Mr. Gaudio: He has already indicated that his experience showed that Airborne's charges were

(Testimony of R. J. Adachi.)

higher than the charges he has experienced with Bay Area.

Is that correct, Mr. Adachi? [784]

The Witness: That is right.

Q. (By Mr. Gaudio): When you say you are a member of Bay Area, I assume that your membership dues and assessments have been paid, and you are a member in good standing; is that correct?

A. Yes.

Q. Did you attend a meeting of the members of Consolidated Flower Shipments, Inc.—Bay Area on February 15, 1952? A. Yes, I did.

Q. And was that held at the San Francisco Municipal Airport, South San Francisco, California? A. Yes.

Q. I show you a document entitled, "Resolution of Members of Consolidated Flower Shipments, Inc.—Bay Area," and ask you, did you subscribe to that document as one of the members?

A. Yes.

Q. Where is your name?

A. Right here, this one.

Q. Being the sixth signature of the members to have subscribed? A. Yes.

Mr. Gaudio: We offer this as Respondent's next exhibit in order for identification.

Examiner Walsh: It will be marked for identification as [785] Bay Area's Exhibit No. 9.

(The document above referred to was marked for identification as Bay Area's Exhibit No. 9.)

(Testimony of R. J. Adachi.)

Mr. Wolf: At this time, Mr. Examiner, I would like to object to the introduction of this as completely self-serving, hearsay so far as this proceeding is concerned.

Q. (By Mr. Gaudio): Mr. Adachi, were you familiar with the contents of this resolution?

Do you understand the purpose of this hearing as an investigation regarding Bay Area's activities? A. Yes.

Q. Is it your purpose and intention as a member of Bay Area in the form of this resolution with the other members to subscribe your desire and intention that the activities of Bay Area be permitted to continue, or, in the alternative, its application for exemption granted?

A. Yes, I would sure like to see the Bay Area continue.

Mr. Gaudio: You may cross-examine.

Examiner Walsh: Cross-examination, Mr. Wolf.

Cross-Examination

By Mr. Wolf:

Q. Mr. Adachi, you have testified that generally you found that Airborne's shipments cost you more so far as freight, perhaps, is concerned, than Bay Area's shipments; is that correct? [786]

A. Yes.

Q. You understand, do you not, that Airborne is a regulated carrier under the jurisdiction of the Civil Aeronautics Board? You know that?

(Testimony of R. J. Adachi.)

A. So I understand.

Q. And you know that Bay Area is not, don't you?

Mr. Gaudio: Well, it is of record that Bay Area holds no operating authority as a carrier.

Q. (By Mr. Wolf): Do you know, Mr. Adachi, that if an air carrier, an indirect air carrier, is under regulation of the Civil Aeronautics Board that there are certain details, certain things that must be performed by it that do not have to be performed by a non-regulated group?

Do you understand my question?

A. No, I don't.

Examiner Walsh: Clarify it, Mr. Wolf.

Q. (By Mr. Wolf): Do you realize or know that if an indirect air carrier is regulated—that is, under the jurisdiction of the Civil Aeronautics Board—that it has to file reports and tariffs? You know that? A. Yes.

Q. Do you know that there are certain requirements in regard to service of a regulated [787] carrier? A. I guess so.

Q. Do you know anything about the Airborne service, the details of the service?

A. What do you mean?

Q. I will be more specific. Do you realize, for instance, that Airborne operates a teletype system through Dallas, St. Louis, Chicago, New York, Los Angeles, Boston and San Francisco? Do you know that?

(Testimony of R. J. Adachi.)

A. Well, I guess any big outfit should have those things.

Q. That is right. That costs money, doesn't it?

A. Oh, yes.

Q. Do you know, for instance, that the claims procedures are quite involved and cost considerable money?

A. It may be. I wouldn't know anything about claims.

Q. You wouldn't know about that?

A. No.

Q. You say that after you had this difficulty in 1948 with Mr. McPherson that you shipped by Airborne? A. I did, yes.

Q. When was the last time you shipped by Airborne?

A. Well, I can't say for sure, but it must have been some time in 1949.

Q. You didn't ship through Airborne in 1950? No shipments in 1950?

A. No, I don't think so.

Q. None in 1951? [788] A. No.

Q. None this year? A. No.

Q. You testified that on the first occasion in 1947, I believe it was, Mr. McPherson wouldn't accept a shipment of yours?

A. If I recall, I think he told me twice.

Q. I see. When was the first time?

A. The first time was some time in 1947, during the chrysanthemum season, and the second time it

(Testimony of R. J. Adachi.)

was either the end of July or the first part of August.

Examiner Walsh: Was that 1947 or 1948?

The Witness: The second time was definitely in 1948.

Q. (By Mr. Wolf): Do you know when Airborne received a certificate as a common carrier from the Civil Aeronautics Board?

Mr. Gaudio: Just a moment. I don't understand—

Mr. Stowell: Letter of registration.

Mr. Wolf: Letter of registration.

Q. (By Mr. Wolf): Do you know when that was? A. No.

Q. You don't know whether that was before or after you tendered a shipment to Mr. McPherson and he couldn't take it? You don't know that, do you? [789] A. Well—

Q. You don't know it, Mr. Adachi, do you? You don't know that?

A. Well—I think they have to have a certificate.

Q. As of what date did they have to have a certificate?

A. Before they go in business. You can't run a business like that without any kind of a license.

Q. Bay Area does, doesn't it, Mr. Adachi?

Examiner Walsh: We are getting into argument.

Mr. Wolf: I will withdraw the last remark.

Q. (By Mr. Wolf): Mr. Adachi, do you recall that on the first occasion when you offered a ship-

(Testimony of R. J. Adachi.)

ment to Mr. McPherson that on the same day you first went to Slick Airlines and they couldn't take the shipment?

A. No, I went to see Mr. McPherson first, and he refused me on the ground that the other large wholesalers wouldn't like it. So the only thing I could do was to go to Slick Airways and have my boxes shipped that way, and they went out that night.

Q. They did? A. Yes.

Q. Do you recall what time of day it was?

A. Oh, it must have been a little after noon.

Q. Wasn't it after three o'clock in the afternoon? Now, stop and think, Mr. Adachi. [790]

A. No, it can't be, because I usually have my boxes packed by twelve o'clock.

Q. Usually, not always?

A. 99 per cent of the time. I have to, because at night I am busy again. It have to pick flowers. So, I try to finish them up. In fact, almost all the time I am all finished by noon. The only thing I do is put them on a truck and take them out to the airport.

Q. This first time was July of 1947, around in there, to the best of your recollection?

A. Yes.

Q. The second time—When was the second time that Mr. McPherson said he wouldn't take the shipment from you?

A. I don't know whether it was the end of July or the first of August.

(Testimony of R. J. Adachi.)

Q. Do you recall who else was present when Mr. McPherson said that he wouldn't take the shipment?

A. I don't know. I was in his private office, if it was a private office.

Q. Was anybody else there?

A. A lot of girls working in the main office there.

Q. But in the private office where you were, was there anybody else there?

A. I don't recall.

Q. Don't you recall that Mr. McPherson said that there [791] wasn't any space available on that day?

A. There could have been.

Q. Mr. Adachi, do you recall that Mr. McPherson told you there was no space available on the air line that day?

A. He didn't say that.

Q. You don't remember that he said that?

A. No.

Q. Mr. Adachi, on the second occasion, do you remember whether or not you phoned in the morning to Airborne to reserve space?

A. I don't recall.

Q. What time do you usually bring the flowers into Airborne when you have shipped by them?

A. When I did ship by them, I usually took them up to the airport the early afternoons, but later on they came and picked them up.

Q. I see. Now, Mr. Adachi, try and think back to 1951 a little bit, will you please.

A. That is last year.

(Testimony of R. J. Adachi.)

Q. Just last year. Do you recall that you shipped—made approximately ten shipments by Airborne in 1951, now that you have thought about it? A. 1951? No.

Q. Last year.

A. Last season I did not ship any boxes by Airborne. [792]

Mr. Wolf: Thank you, Mr. Adachi. No further questions.

Examiner Walsh: Mr. Stowell?

Mr. Stowell: No.

Examiner Walsh: Redirect.

Redirect Examination

By Mr. Gaudio:

Q. Whatever conversation took place when you called at Mr. McPherson's office, you went directly to Slick and they took your shipment; is that correct? A. Yes.

Mr. Gaudio: That is all.

Examiner Walsh: No further questions of Mr. Adachi?

Mr. Wolf: No questions.

Examiner Walsh: Thank you. You are excused.

(Witness excused.)

Mr. Gaudio: At this time, I would like to call Mr. Yamane.

Whereupon:

KIO YAMANE

was called as a witness for and on behalf of Bay Area, and, having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Gaudio:

Q. Mr. Yamane, what is your occupation and address?

A. My occupation is being a chrysanthemum grower and shipper. I live at 1948 Clark Avenue in Palo Alto, and also own land [793] in Mountain View.

Q. Have you had occasion to ship your flowers via air carriers to the eastern markets in the past?

A. Yes.

Q. On what basis do you ship, on consignment or straight sale?

A. All consignment.

Q. You heard the testimony, did you not, of Mr. Adachi, regarding the consignment sale procedure with respect to the transportation costs?

A. Yes.

Q. Is that procedure the same as yours?

A. Yes. I will say that from the gross sales their commission is first taken off, and freight later taken off. In other words, we are paying for all freight.

Q. How long have you been shipping by air?

A. I will say the last six years, I believe. Since 1946, I think.

(Testimony of Kio Yamane.)

Q. Prior to the fall of 1949, did you ever use Airborne's service? A. Yes, I did.

Q. On how many occasions, generally, or were they periodically?

A. Whenever the occasion arose. As far as that goes, one of my first customers specified for air freight, so I used [794] Airborne's facilities from the beginning.

Q. How frequent were your shipments by air via Airborne before the fall of 1949?

A. How frequent? Oh, I will say about three times a week.

Q. And what was the average shipment? What would it consist of in boxes?

A. Probably, in those early days, maybe three or four boxes.

As far as that first question there, I tried not to ship by air unless they specified for it. In other words, if they asked for it by air, I shipped it by air, but otherwise I kept away from it.

Q. Otherwise, did you ship by rail?

A. Yes.

Q. Did you stay away from the air freight because of the extra cost of that form of transportation? A. Yes.

Q. Does the cost of transportation have a direct relation to how much business you do in the eastern markets? A. Yes.

Q. Were you ever a member of the organization known as the Northern California Consolidators?

(Testimony of Kio Yamane.)

A. No.

Q. Let me ask this question. You are a member of the Consolidated Flower Shipments, Inc.—Bay Area? [795]

A. Yes.

Q. Prior to your membership in the Bay Area group, were any shipments of yours ever refused by Airborne?

A. No.

Q. Do you recall the date about when you joined the Bay Area group?

A. I don't know when, exactly what day or year it was, but in the beginning.

Q. The very beginning? A. Yes.

Q. Do you remember the occasion when Mr. Reynolds, who was originally the contract trucker, disposed of his equipment to Airborne?

A. Yes.

Q. Did you ever have any conversations with Mr. McPherson about that fact, Reynold's transaction?

A. I believe he had phoned us up at our place. I wasn't in, but my wife said somebody phoned up from the Airborne.

Q. And did it have anything to do with truck transportation?

A. Well, they said that Reynolds sold out to Airborne and that there is no more Bay Area, that Airborne is the only company that is handling flowers.

Mr. Wolf: Mr. Examiner, I allowed a couple of questions and answers to go by there, because I

(Testimony of Kio Yamane.)

thought there might be a [796] foundation laid, but this seems to be hearsay. Somebody just phoned from Airborne. That is really insufficient foundation on which to base a telephone conversation.

Examiner Walsh: I will sustain the objection.

Mr. Wolf: I move that the last two questions and answers be stricken, then.

Examiner Walsh: I will grant the motion to strike.

Q. (By Mr. Gaudio): At this time, were you advised by any of your office personnel as to whether truck transportation by Mr. Reynolds was available or not?

Mr. Wolf: Mr. Examiner, I object to any statements by Mr. Yamane's office personnel in the absence of a person representing Airborne.

Mr. Gaudio: That is a yes or no question.

Examiner Walsh: Would you read the question back, Mr. Reporter?

(Question read.)

The Witness: Was I advised?

Mr. Gaudio: Just answer the question "Yes" or "No," whether anyone of your office personnel advised you regarding whether truck transportation by Reynolds was available.

Mr. Wolf: As far as Airborne is concerned——

Mr. Gaudio: If we are going to call a witness, we would like to lay a foundation. [797]

Examiner Walsh: I will allow the question. You may answer.

(Testimony of Kio Yamane.)

Q. (By Mr. Gaudio): Were you so advised? Just answer "Yes" or "No." Did you receive any advice to that effect? At your office?

A. I have no office. I am a one-horse outfit, so usually I get all the business matters brought to myself.

Q. I see. And when you are away from the office, who handles the telephone?

A. My wife does.

Q. And if you had any information regarding the transaction, was it from your wife?

A. Yes.

Q. Did you make any inquiry after that regarding the availability of truck transportation? Did you call anyone or make any investigation?

A. I don't know exactly what happened at that time. I don't know if I can remember if I let Airborne handle my flowers for a few shipments there. I can't remember.

Q. Who picked them up when Airborne handled them? A. They come and pick it up.

Q. An Airborne truck? A. Yes.

Q. Was Mr. Reynolds operating an Airborne truck? A. Was Reynolds operating? [798]

Q. Yes. A. No.

Q. Were any of Mr. Reynolds' former drivers operating an Airborne truck? A. Yes.

Q. How long did that continue?

A. I don't know.

Q. I mean, how long was it that Airborne handled your shipments for a time?

(Testimony of Kio Yamane.)

A. Since the termination; I will say maybe about a week.

Q. And after that was your service via Bay Area facilities resumed or continued?

A. Yes.

Q. Have you found any substantial difference in the cost of the transportation via Airborne according to your experience and the cost of your transportation via Bay Area?

A. Well, since the start, I understand there was a fifty cent charge. They were charging 75 cents for picking up on top of that, I understand.

Mr. Wolf: Just a minute, please.

Mr. Examiner, this is supposed to be of the witness' knowledge.

Q. (By Mr. Gaudio): Mr. Yamane, testify from your own knowledge and observation of the transportation charges paid by you for Airborne's [799] account. Go ahead.

Mr. Wolf: And the dates for comparison.

Examiner Walsh: And related to a particular time.

Mr. Gaudio: Yes.

The Witness: Until Bay Area came into formation, in my opinion—I mean, I have been told by Mr. McPherson and the secretary that they were charging one cent a pound on top of the cost for Airborne's expense.

Q. (By Mr. Gaudio): In other words, Mr. McPherson's secretary told you that?

(Testimony of Kio Yamane.)

A. I mean, I delivered the boxes there myself and inquired about rates and everything else.

Q. At Airborne's office? A. Yes.

Q. Who would you talk to?

A. I think I talked to Mr. McPherson there.

Q. And what did he tell you regarding the cost of your transportation?

A. Well, like I stated, 75 cents pick-up fee. Then there is that regular rate fee. There is one cent a pound charge for Airborne's expense.

Q. You mean that regardless of the weight of your shipment there would be a charge of one cent per pound? A. Yes. [800]

Mr. Wolf: Mr. Examiner, I go back to the original objection. The questions were as to whether Airborne's or Bay Area's charges are higher, and it is going to have to be specific as to certain points of time whereby there can be a true comparison. We are going into detail as to what this witness understands about costs and expenses. If he has any of his manifests, let him produce them. We can see exactly what is on them.

Examiner Walsh: You will have to relate it to a definite time.

Q. (By Mr. Gaudio): This was just before Bay Area; is that correct?

A. Yes, before Bay Area was formed.

Q. Very shortly before?

A. As far as I can remember, when I first started to join Bay Area, because I haven't shipped

(Testimony of Kio Yamane.)

anything, so far as I know, through Airborne after Bay Area was started.

Q. And what time was that with respect to the year or month that you were using Airborne? What calendar year and month were you using Airborne prior to Bay Area?

A. Well, I can't quite catch the question, but my shipping periods are between July and November.

Q. Did you ship between July and November of 1949? A. Yes.

Q. On the average of three times per week?

A. During that time, I believe, it was [801] more.

Q. And was it during this period that you had occasion to call at Airborne's office regarding the cost of your transportation?

A. Yes, I believe I did.

Q. And have you found, I believe you testified, a substantial difference between Airborne's cost and Bay Area's cost? A. Yes.

Q. And they are higher by Airborne than Bay Area? A. Higher.

Mr. Wolf: As of what date, I again ask?

Mr. Gaudio: I am speaking of the charges of Airborne's transportation before Bay Area, as compared with Bay Area's charges.

The Witness: Yes.

Mr. Gaudio: Is that correct?

The Witness: Yes.

Q. (By Mr. Gaudio): Now, can you give us on

(Testimony of Kio Yamane.)

a per box basis any approximation of that difference?

Mr. Wolf: Mr. Examiner, again I ask, if we are going into details as to the costs, let manifests be produced from each concern as of about the same period of time.

Mr. Gaudio: Mr. Examiner, let me ask this first.

Q. (By Mr. Gaudio): Mr. Yamane, has Airborne ever released or returned to [802] you any of the waybills on your shipments via Airborne?

Do you know what I mean by the waybill, the shipping document? A. Yes.

Q. Did you ever get those shipping documents, as to the boxes that went by Airborne?

A. That I can't say.

Q. Have you ever seen them come back from Airborne after the transportation was concluded?

A. I don't think so.

Q. Has Mr. McPherson ever given them to you?

A. I don't think so. I don't think I received any.

Q. When you say that Airborne's cost is greater than Bay Area's as of that time, from what source or information do you determine what Airborne's cost to you was at that time?

A. Well, from each consignment house we receive a statement listing down every deduction, and freight is definitely listed separately—commission, freight is listed down separately.

(Testimony of Kio Yamane.)

Q. That is the only way in which you ascertained Airborne's cost to you; is that correct?

A. Yes.

Mr. Gaudio: At this time, Mr. Examiner, I would like to have Mr. McPherson produce the original shipping documents, together with the assessments for transportation on the shipments [803] in behalf of Mr. Yamane for the calendar year 1949, and then we can make a comparison.

Examiner Walsh: Are they available, Mr. McPherson?

Mr. Wolf: What is that again? Do you want Mr. Yamane's manifests—

Mr. Gaudio: Showing thereon the total cost of the transportation to him.

Mr. Wolf: How many shipments do you want?

Mr. Gaudio: He said there were three or four times per week during a seasonal period. What was the season, Mr. Yamane?

The Witness: From approximately July to October and November, late in October and November.

Mr. Gaudio: From July through November, both inclusive, of 1949. That would be the completed documents which have been offered as Airborne's Exhibit No. 4 for the shipments in behalf of Mr. Yamane during that season in 1949, July to November, both inclusive. It is entitled, "Air Freight Waybill and Invoice," Airborne's No. 4.

Mr. McPherson: We can produce that. Do you want to know that, Mr. Examiner?

(Testimony of Kio Yamane.)

Mr. Wolf: Can you produce that?

Mr. McPherson: I can produce that. They are on file in the warehouse at Oakland, and it may be rather difficult, take a few days to get.

Mr. Gaudio: May we go off the record for this purpose? [804]

Examiner Walsh: Off the record.

(Discussion off the record.)

Examiner Walsh: On the record.

Let the record show that Mr. Wolf and Mr. Gaudio have agreed, first, that Mr. McPherson will secure the air bills with respect to Mr. Yamane's shipments by Airborne, and then Mr. Wolf and Mr. Gaudio will sit down and make a comparative statement showing charges assessed by Airborne on the one hand, and charges assessed by Bay Area on the other, during a representative period, and that the comparison should be a contemporaneous one; and that such statement shall be forwarded to me in Washington, and the parties have agreed that it should be submitted in evidence. If there are any differences of opinion with respect to the comparison, those differences should be set forth in attachments to the comparative statement, and we will receive that as Bay Area's Exhibit No. 9.

Will that be satisfactory?

Mr. Gaudio: Yes. Make a note of that for the record.

(Testimony of Kio Yamane.)

(Bay Area's Exhibit No. 9 was reserved for identification of the document above referred to.)

Mr. Gaudio: I might say in that connection that if any differences should arise regarding landed cost and ultimate cost, Mr. Wolf and I, with Mr. McPherson, should be able to work that out.

Mr. Wolf: For what period, Mr. Gaudio, do you want this? [805]

Mr. Gaudio: You mean for his waybills?

Mr. Wolf: It is difficult to pull them out of the files.

Examiner Walsh: It should be for a period immediately prior to and immediately after he joined Bay Area. I would suggest that the period be narrowed, because I can see where as time is drawn out it might not be truly representative, because tariffs might be different during the period. But, I am wondering if you couldn't determine on a period such as about two or three weeks.

Mr. Gaudio: I would say this, that Mr. Yamane—Inasmuch as we are on the record at this time—Your freight shipments are seasonal, is that correct?

The Witness: Yes.

Q. (By Mr. Gaudio): You go between July and November of each year; is that correct?

A. It is earlier than July.

Q. How soon?

A. During the last few years, June.

(Testimony of Kio Yamane.)

Q. June to November; is that correct?

A. Yes.

Q. And in November of 1949 you started using Bay Area?

A. I believe so, if it is when it started.

Mr. Gaudio: For that reason, Mr. Examiner, we would like to show the cost of the transportation in 1950 for the 1950 season, [806] June to November, as compared to the prior year.

I would be willing to stipulate that the same rate might be made applicable as was applied in 1949, as far as that goes. I don't want to raise the issue of rates.

Examiner Walsh: Didn't we get testimony here that he used Airborne's service after he joined Bay Area?

Mr. Gaudio: That is true, but the point is that he used Airborne for the season of 1949, and he used Bay Area for the 1950 season. The only way we can make a comparison in Mr. Yamane's case is to show the two seasons.

Examiner Walsh: When did he join Bay Area?

Mr. Gaudio: Do you remember when you first joined Bay Area, Mr. Yamane?

The Witness: Like I said, I don't know the exact month or year, but it was in the beginning, when it started.

Examiner Walsh: That would be some time in 1949, wouldn't it?

The Witness: 1949.

(Testimony of Kio Yamane.)

Examiner Walsh: And that would be during your flower season?

The Witness: Yes.

Examiner Walsh: And during the period immediately after you joined Bay Area, did you ship flowers east through Bay Area's service?

The Witness: Yes, for a little while. [807]

Mr. Gaudio: Until the season closed?

The Witness: Yes.

Examiner Walsh: All right. I want the comparative statement related to that period, because otherwise you would have too much of a disparity.

Mr. Gaudio: Did you use Airborne in the 1950 season?

The Witness: As far as I know, I haven't used their facilities.

Examiner Walsh: A 1950 comparison would carry us too far afield, Mr. Gaudio.

Mr. Gaudio: I was trying to get a comparison on a seasonal basis.

The Witness: I will say, except for the trouble at the time, I might have used Airborne's facilities then.

Mr. Gaudio: You mean during the trouble with Mr. Reynolds you might have used Airborne?

The Witness: Yes.

Mr. Gaudio: Could we use that period as a comparative period?

Mr. Wolf: Mr. Examiner, the purpose of this comparison, as I understand it, is to show why Bay Area was organized——

(Testimony of Kio Yamane.)

Mr. Gaudio: It continues to exist, if the Examiner please.

Examiner Walsh: I am going to hold the comparison to a representative period in 1949. If the parties can agree upon that, it will be satisfactory. Otherwise, I will require that [808] the evidence be produced in the regular fashion at this hearing.

Q. (By Mr. Gaudio): Mr. Yamane, did you attend a meeting of the members of Consolidated Flower Shipments, Inc.—Bay Area, held on February 15, 1952? A. Yes.

Q. I show you a copy of a resolution, and ask you if you subscribed the same, together with the other members shown thereon? A. Yes.

Examiner Walsh: Is this the document you presented to me? There is no purpose in referring to that any further in this hearing, because, if you offer the testimony, I am going to refuse to receive it. It should be filed in the case involving your exemption application.

Mr. Gaudio: I thought we had incorporated the exemption as a part of this record, Mr. Stowell.

Mr. Stowell: I will agree to——

Examiner Walsh: Merely for the purpose that the exemption application has been made, but this particular document is an appeal to the Civil Aeronautics Board, a petition to grant the exemption for certain purposes. Now, your exemption is not an issue in this particular case.

Mr. Gaudio: I appreciate that, but my thought

(Testimony of Kio Yamane.)

was that inasmuch as the application for exemption has been alluded to here many times that the position of the members in that respect would [809] certainly be material to the Board's consideration on all of the issues involving Bay Area.

Examiner Walsh: As I recall, the only reason that the exemption application was alluded to was for the purpose of showing that Bay Area had requested an exemption from the Board to relieve it from what Bay Area would otherwise probably characterize as rather a difficult tariff situation.

Mr. Gaudio: That is part of it.

Examiner Walsh: And I don't believe the application was alluded to for any other purpose.

Mr. Stowell: I agree, Mr. Examiner. I agreed to stipulate the fact that an application for exemption has been filed, but did not stipulate the contents whatsoever. However, I offer no particular objection.

Examiner Walsh: I have to draw the line somewhere.

Mr. Stowell: Its materiality, of course, is very low.

Examiner Walsh: It certainly is not material to any issue in this case. It should be filed in connection with your exemption application. I will not use it, whether it is in the record or not.

Mr. Gaudio: I would like to make one further observation, Mr. Stowell. It is true, is it not, that

(Testimony of Kio Yamane.)

the application was filed pursuant to various conferences which you and I had?

Mr. Stowell: That is correct.

Mr. Gaudio: And that the form of the application addressed [810] to the Board is for an exemption, if such an exemption is deemed necessary?

Mr. Stowell: That is correct.

Mr. Gaudio: And whether it is deemed necessary may depend on the determination of this investigation; is that correct?

Mr. Stowell: I think that the Examiner should not draw any inference of an admission from the filing of the exemption. I believe that is the purpose of your remarks, and I will agree to that.

Examiner Walsh: Of course, you understand, I am not planning on treating the question of this exemption application in my report at all. That is something that is entirely different and an independent matter; regardless of the fact that even a cease and desist order might be issued in this case, that would be no bar to the Board's granting this Respondent an exemption, or, in fact, be no bar to the Board's granting a letter of registration, if the Board saw fit to do so. I am not speaking for the Board, you understand.

Mr. Stowell: Mr. Examiner, technically, the filing of an application for an exemption is irrelevant to this proceeding. However, I felt that no great harm would be done if we stipulated the fact that an exemption had been filed. I mean, the

(Testimony of Kio Yamane.)

Board is perfectly cognizant of what is relevant and what is not.

Mr. Gaudio: I understood it was part of this record, because Mr. Stowell was examining Mr. Barulich at some length on [811] this matter.

Mr. Stowell: That was for purpose of cross-examination. I exhibited the portion I was interested in, but I am quite sure I stated at the time that I was not stipulating the contents.

Mr. Gaudio: If I understand the Examiner correctly, in so far as the record of this proceeding is concerned, his only thought in that connection will be that an application for exemption, if necessary, has been filed. Is that correct?

Examiner Walsh: No inferences will be drawn from the fact that it has been filed. That will be handled independent of this proceeding, and I can see actually that it is not dependent in any respect on the outcome of this proceeding.

Mr. Stowell: I agree, Mr. Examiner, that your remarks are quite accurate, and the only reason that I even agreed to stipulate the fact of the exemption being filed was merely out of deference to the Respondents, realizing it was probably irrelevant to this proceeding, but I had no great objection to it.

Mr. Gaudio: I have no further questions of Mr. Yamane.

Mr. Wolf: I have a couple of questions. It will just take a minute, Mr. Examiner.

(Testimony of Kio Yamane.)

Examiner Walsh: Cross-examination of Mr. Yamane by Mr. Wolf.

Cross-Examination

By Mr. Wolf:

Q. Mr. Yamane, you testified that you saw some truck [812] driver on an Airborne truck who previously had driven a truck for Mr. Reynolds. Do you remember his name?

A. I do not, but this fellow formerly, quite some time before, worked for the Railway Express Company, and transferred over. Meanwhile, I don't know what he was doing, but then he was working for Reynolds. I don't know what his name was—a young fellow.

Q. And you think that was around 1950?

A. Yes, that is right.

Q. As a matter of fact, when a flower shipment is picked up at your place of business, the truck driver leaves you a document that looks something like this Exhibit No. 5 of Airborne, doesn't he? He gives you a receipt for the shipment?

A. Yes.

Q. He does give you a receipt for the shipment?

A. It is blank; just what I fill out.

Q. What you fill out is on the sheet, and it is receipted for? A. Yes.

Q. You testified that you heard or knew about

(Testimony of Kio Yamane.)

Airborne having bought out Mr. Reynolds. Is that what you said? Something like that?

A. Yes, I was told that Airborne bought out his equipment. And also, I believe—I don't know if it was Reynolds or——

Q. That is all right. You knew about the equipment. Do [813] you know, as a matter of fact, Mr. Yamane, that actually Airborne bought one truck from Mr. Reynolds? A. Yes.

Q. Do you know that, one truck, that is all?

A. Yes.

Mr. Wolf: No further questions.

Examiner Walsh: Mr. Stowell?

Mr. Stowell: I want to ask one question.

Q. (By Mr. Stowell): What happens at the other end? Let's say you send two boxes of flowers to a consignee in Washington. What happens as soon as he gets the boxes, do you know?

A. No, I don't know. Some houses, it seems like they pay the freight bill right away, and some are on credit. I ran into cases like last year they didn't deduct for freight.

Q. They did not deduct for freight?

A. No, I had to pay at the end of the year.

Q. You had to pay at the end of the year?

A. I had to make out my own check and send it back East.

Q. Let's take the case where the consignee does pay the freight as soon as he gets the boxes. Suppose he can't sell those two boxes, and he gives you a report at the end of the week that he just can't

(Testimony of Kio Yamane.)

sell them, the flowers wilted away or they died. Then what happens as far as the freight is concerned?

A. I still have to pay for it. [814]

Q. You mean, he bills you for that freight?

A. Yes.

Q. He sends you a report which says——

A. Dumped.

Q. Dumped; haven't taken in a single nickel for those boxes. Do you send him a check covering the freight?

A. No, I don't send him a check, but I make other shipments. That has to cover that freight.

Q. Let's suppose that he doesn't want flowers from you any more.

A. I had that incident last year, where I had to send them my own check to cover that freight cost.

Mr. Stowell: No further questions.

Examiner Walsh: Mr. Gaudio, do you have any redirect?

Redirect Examination

By Mr. Gaudio:

Q. Mr. Yamane, you have attended various meetings of the members of the Board of Directors of Bay Area, have you? A. Yes.

Q. And are you familiar with the provision in the By-laws of Consolidated Flower Shipments, Inc.—Bay Area that its affairs and policy are gov-

(Testimony of Kio Yamane.)

erned by the members of the Board of Directors?

A. Yes.

Q. And, as a member in good standing, you accept the [815] directions as determined by the members according to majority rule; is that correct?

A. Yes.

Q. Do you know of any circumstance or matter of policy affecting Bay Area that was not without your approval and knowledge at all times?

A. What was that again?

Q. Has Bay Area ever performed any act, so far as you know, in handling shipments in its service they rendered for you in any manner that wasn't with your full knowledge and consent at all times?

A. No.

Mr. Gaudio: No further questions.

Mr. Wolf: No questions.

Mr. Stowell: I just have one little question.

Recross-Examination

By Mr. Stowell:

Q. At the other end, again, suppose the two boxes were sold and the florist gets \$20, and the air freight charges are \$2.00. What commission does the florist take?

A. Twenty or twenty-five per cent, depending on the city.

Q. Of what amount, \$18.00?

A. You said \$20.00.

Q. I said they sold them for \$20.00, but that the

(Testimony of Kio Yamane.)

air freight charge was \$2.00, so that he ended up really with \$18.00. [816]

Does he figure his 20 or 25 per cent on \$18.00 or the \$20.00? A. \$20.00.

Mr. Stowell: Thank you.

Mr. Gaudio: Thank you, Mr. Yamane. [817]

* * *

JOHN C. BARULICH

resumed the stand and testified further as follows:

Cross-Examination

(Continued)

By Mr. Wolf: [989]

* * *

Q. Mr. Barulich, what air lines are presently used by Bay Area?

A. Every air line that operates out of San Francisco that is certificated.

Q. What connecting carriers are frequently used?

Mr. Gaudio: By whom?

Mr. Stowell: By Bay Area in connection with its routings.

The Witness: I believe that in some phase of the operation, or at some time since Bay Area has been established, every certificated air line within the United States has been employed.

Q. Is it true that the Slick Airlines is used for shipments routed to St. Louis more than any other carrier?

(Testimony of John C. Barulich.)

Mr. Gaudio: Are we indulging in any particular—

Mr. Stowell: These are all preliminary questions.

The Witness: The factors there for governing routing are, if their service happens to be better or superior to that of a competitor, or an alternate air line, they are given the movement.

Q. Who determines whether their service is superior?

A. Periodic checks by the Board of Directors of Bay Area. On inquiries to me over past history performances, it developed that an air line should be considered to handle that particular [1002] tonnage.

Q. Mr. Barulich, have any routing instructions been issued by the Board of Directors subsequent to Exhibit BA-16?

A. They are issued practically every Board meeting, but on a verbal basis, nothing ever printed or mimeographed.

Q. There is nothing on record to indicate that "Necessary instructions will be changed from time to time, according to arrival time service, new air lines, and so forth, subsequent to the 12th of July, 1949"?

A. I believe the minutes will bear me out on that. There must be changes. Have you examined the complete minutes?

Q. Mr. Barulich, you have submitted this, the purport of which is that new instructions are to

(Testimony of John C. Barulich.)

be issued from time to time, and I ask you if in fact any new instructions have been issued in the same manner as this one was?

A. I say I have never received anything on a typewritten or mimeographed form, although I have received verbal instructions. That was prior to my becoming Executive Secretary, and part of the role of Executive Secretary was verbal instructions as to routing.

Q. Have you received any such instructions since the 23rd of June, 1950?

A. Routing is a constant headache with the members of Bay Area, particularly the Board of Directors, and changes are being made daily. Requests from customers come in, routing [1003] requests, carrier requests. [1004]

* * *

J. D. McPHERSON

resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Stowell:

Q. Mr. McPherson, would you tell us which of the members of Bay Area now ship via Airborne?

A. Amling Company, Boodel Company, Golden Gate Wholesale, Western Wholesale, Kearns, San Lorenzo, Nuckton, Mount Eden, [1086] Mountain View Greenhouses, William Zappettini, Enoch, R. J. Adachi.

(Testimony of J. D. McPherson.)

Examiner Walsh: That question is with respect to Airborne?

Mr. Stowell: Yes.

Q. (By Mr. Stowell): Mr. McPherson, did you hear the testimony of Mrs. Decia? A. Yes.

Q. Do you recall that she testified about a Mr. Van Duker? A. Yes.

Q. Are you acquainted with that individual?

A. Yes.

Q. Could you tell us who Mr. Van Duker is?

A. Mr. Van Duker is a traffic consultant and specialist in the produce market, who was asked to make a talk at the Claremont Hotel before a group of florists, close to a year ago, I believe it was. He stated that the florists industry could have a much better arrangement that it does have at present, if they would all get together and form one big group which could process their own claims and get better rates and all the other advantages that one group could have.

So a series of meetings, I think about six, were held in the last half of 1951, of all the florists of that area, all invited, and most of them attended, discussing the formulation [1087] of this new group to supersede both the Bay Area group and Northern California Flower Consolidators, and any other associations.

It was proposed that this group would spend in excess of \$20,000 the first year, therefore each member was to be assessed on the basis of his volume of shipping. Some of the florists insisted that all

(Testimony of J. D. McPherson.)

members would have to put up the money in advance, and this naturally amounted to a considerable sum for some wholesalers, and they did not desire to put that much money up in advance, and after one or two meetings in which they could not agree on the amount of money or when to put it up, or how to put it up, it was my understanding that the organization just sort of fell apart, or the desires of the organization were never carried out.

Q. To your knowledge, does this proposed group have any connection with the Northern California Flower Consolidators, Inc.?

A. Not directly. It was to include all florists. In fact, both John Barulich and myself would probably have lost identity entirely, had no connection with it.

Q. To your knowledge, do you know if any of the members of Bay Area attended any of the meetings in that connection?

A. Yes, they did.

Q. Do you have any knowledge of whether any of the members of Bay Area participated in any way in any of the organizational [1088] embryonic steps?

Mr. Gaudio: Just a moment.

Mr. Examiner, the witness has already testified it had a series of pre-organization meetings, but never formulated any specific plans, and the organization died.

Now, I think the testimony ought to die at that point, too.

Mr. Stowell: I will withdraw the question.

(Testimony of J. D. McPherson.)

No further questions.

Mr. Wolf: No questions.

Examiner Walsh: Mr. Gaudio?

Cross-Examination

By Mr. Gaudio:

Q. Mr. McPherson, when you mentioned various names of Bay Area members who presently ship via Airborne, are they straight shipments or consolidations, or is there any allocation?

A. It could be either.

Q. And that is a transaction, I assume, in which the particular florist shipper tenders flowers in boxes to you for transportation; is that right?

A. Yes.

Q. And you pick it up? A. Yes.

Q. In some of those transactions is it true that Bay Area does not enter into the picture as such?

A. You seem to have a double negative there that I do not [1089] quite understand. [1090]

* * *

Mr. Stowell: Mr. Examiner, at this time I would like to read a stipulation that the Enforcement Attorney is entering into with Respondents.

Mr. Wolf: Just a minute.

Mr. Examiner, there is another party in this case. I [1105] would like to see the stipulation, or hear it, before you start talking about a stipulation that is going into this record.

Examiner Walsh: Have you reduced it to writing?

Mr. Gaudio: It is in scratch form.

Examiner Walsh: Will you show it to Mr. Wolf before you read it into the record?

Off the record.

(Discussion off the record.)

Examiner Walsh: On the record.

Mr. Stowell: Mr. Examiner, during the California peak seasons of field flowers, high air transportation rates lead to a higher required competitive offering selling price in the eastern markets, which in turn leads to reduced sales and reduced commissions to the wholesale outlet, and may even lead to the elimination of the source of supply to that particular wholesale outlet by the California grower or shipper.

Mr. Gaudio: So stipulated.

Mr. Wolf: So stipulated.

Mr. Stowell: It is our understanding that this is an agreed statement of fact.

Mr. Gaudio: Can we identify it in connection with a particular receiver or location?

In other words, if so-and-so were called to testify, who would that be?

Mr. Stowell: If anyone were called to testify, it would be [1106] a wholesale commission merchant in an eastern market.

* * *

Received March 18, 1952. [1107]

United States of America Civil Aeronautics Board
Washington, D. C.

Docket No. 4902, et al.

In the matter of

CONSOLIDATED FLOWER SHIPMENTS,
INC.-BAY AREA, et al.

Adopted by the Civil Aeronautics Board at its office
in Washington, D. C., on the 5th day of
February, 1953.

Order No. E-7139

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions and decision, which is attached hereto and made a part hereof;

Upon the basis of such opinion and the entire record herein, and under the authority contained in sections 205(a) and 1002(c) of the Civil Aeronautics Act of 1938, as amended;

It is Ordered that:

1. Consolidated Flower Shipments, Inc.-Bay Area, its successors and assigns, and John C. Barulich, its executive-secretary, and its officers, directors, agents and representatives cease and desist from engaging indirectly in air transportation in violation of section 401(a) of the Act;

2. This proceeding, insofar as it relates to Wil-

liam Zappettini, other than in his capacity as officer and director of Consolidated Flower Shipments, Inc.-Bay Area, be and it hereby is dismissed.

3. This order shall become effective 12:01 a.m., on March 7, 1953.

By the Civil Aeronautics Board:

[Seal] /s/ FRED A. TOOMBS,
Acting Secretary.

United States of America, Civil Aeronautics Board,
Washington, D. C.

Docket No. 5037-4902

In the matter of

The Application of CONSOLIDATED FLOWER SHIPMENTS, INC.-BAY AREA, WILLIAM ZAPPETTINI, an Individual; JOHN C. BARULICH, an Individual, for an Exemption Under Section 1(2) or Section 416(b) of the Civil Aeronautics Act of 1938, as Amended, if Applicable.

Adopted by the Civil Aeronautics Board at its office in Washington, D. C., on the 5th day of February, 1953.

Order No. E-7140

ORDER

It Appearing to the Board that:

1. The Board by Order Serial No. E-5264, dated April 9, 1951, instituted an investigation (Docket

No. 4092) into the operations of Consolidated Flower Shipments, Inc.-Bay Area (Bay Area), to determine whether Bay Area has engaged or is engaging indirectly in air transportation in violation of the provisions of the Act, particularly section 401(a) thereof, or any requirement established pursuant thereto, particularly Part 296 of the Board's Economic Regulations;

2. Bay Area, William Zappettini, and John C. Barulich filed an application herein on July 30, 1951, for an exemption pursuant to section 1(2) or 416(b) from the provisions of Title IV of the Civil Aeronautics Act and the Economic Regulations issued thereunder, if applicable;

3. In support of their application, applicants allege: (1) Bay Area serves only its members and not the general public; (2) it is non-profit and cooperative in nature; (3) it ships merchandise which is produced and transported under unusual circumstances; (4) Bay Area's services are not available at economical charges from registered forwarders; (5) elimination of Bay Area would result in the imposition of prohibitive freight charges upon the products shipped by members, with a consequent loss of their eastern markets. Memoranda in opposition filed by Airborne Flower and Freight Traffic, Inc. (Airborne), a registered air freight forwarder, allege: (1) many of Airborne's former customers have become members of Bay Area; (2) Airborne and Bay Area are in direct competition; the grant of the application will threaten the existence of registered forwarders; (3) Bay Area and

other non-profit associations have been created by the certificated direct carriers as a means of making it impossible for air freight forwarders to continue operating.

4. Order Serial No. E-6410, adopted May 8, 1952, ordered that consideration of said exemption application be deferred until conclusion of the investigative proceeding in Docket No. 4902;

5. On July 21, 1952, the applicants filed a motion for consolidation of Docket No. 5037 with Docket No. 4902; on July 25, 1952, Airborne filed a memorandum in opposition to said motion; on July 28, 1952, the Enforcement Attorney in Docket No. 4902 filed objections to said motion;

6. The Board is simultaneously herewith issuing its opinion, decision and order in Docket No. 4902 (concluding the investigative proceeding therein), the record in which we have considered in making our findings herein;

In view of the foregoing matters, and acting pursuant to sections 1(2) and 205(a) of the Civil Aeronautics Act of 1938, as amended, the Board finds that:

1. Regulation of air freight forwarders was established after a full and complete investigation and hearing in the Air Freight Forwarder Case, 9 CAB 473 (1948);

2. The application raises questions of such a complex and controversial nature that they should be thoroughly explored in a full public hearing;

3. The grant of an exemption to the applicants herein without according all interested parties in-

cluding regulated freight forwarders an opportunity for a full hearing is not in the public interest inasmuch as such an exemption might well lead to the demoralization and consequent destruction of the registered air freight forwarder industry;

4. The Board has concurrently instituted a formal investigation into the renewal and/or amendment of Part 296 of the Economic Regulations, which will encompass the issues involved in the application herein and to which proceeding all regulated freight forwarders as well as the applicants will be made parties. This proceeding will include a full and complete hearing at which all interested persons including Airborne and other registered forwarders, as well as the applicants, will be given an opportunity to present evidence relevant to applicants' request for an exemption;

5. The grant of an exemption herein to the applicants would prejudice, without complete facts or an adequate record, the issues in the investigation contemplated in finding paragraph 4 above;

6. Denial of the application herein is consistent with past Board policy whereby the Board by a series of enforcement actions against unauthorized forwarding activities incident to shippers' associations has sought to protect regulated air freight forwarders from the unregulated competition of shippers' associations;

7. It is not in the public interest at this time to relieve the applicants from the provisions of Title IV of the Civil Aeronautics Act of 1938, as amended;

8. In view of paragraph first numbered 6 hereinabove, it is unnecessary and not in the public interest to consolidate Docket No. 5037 with Docket No. 4902;

It is Ordered that:

1. The application herein for an exemption, Docket No. 5037, be and it hereby is denied without prejudice to the renewal thereof in the formal investigation contemplated by finding paragraph 4 above;

2. The motion of the applicants for consolidation of Docket No. 5037 with Docket No. 4902 be and it hereby is denied.

3. Except to the extent specifically granted herein, all motions and other prayers for relief be and they hereby are denied.

By the Civil Aeronautics Board:

[Seal] /s/ FRED A. TOOMBS,
 Acting Secretary.

United States of America, Civil Aeronautics Board,
Washington, D. C.

Order No. E-7198

[Title of Cause.]

ORDER POSTPONING EFFECTIVE DATE
OF CEASE AND DESIST ORDER

On February 5, 1953, the Board entered herein its order Serial No. E-7139 which, effective March

7, 1953, directed Consolidated Flower Shipments, Inc.-Bay Area, et al., to cease and desist from engaging indirectly in air transportation in violation of Section 401(a) of the Act. On February 24, 1953, Consolidated Flower Shipments filed herein a petition for reconsideration, and for a stay of the effective date of the cease and desist order until disposition of the petition for reconsideration or until the conclusion of the investigation in Renewal of Part 296 of the Economic Regulations Investigation of Indirect Carriage of Property, Docket No. 5947. On March 2, 1953, an Answer opposing this petition was filed by Airborne Flower and Freight Traffic, Inc.

After consideration of the foregoing documents, the Board finds that the petition for reconsideration probably cannot be considered and ruled upon prior to March 7, 1953, and that a stay of the effective date of the cease and desist order will be appropriate and in the public interest. The Board further finds that the question of whether the cease and desist order should be stayed pending completion of the proceedings in Docket No. 5947 should be considered in connection with the petition for reconsideration.

It is Ordered that, the effective date of Order Serial No. E-7139 be and it hereby is stayed and postponed pending consideration by the Board of said petition for reconsideration and for a stay of such order until completion of the proceedings in Docket No. 5947, and, in the event that said petition

profit Cooperative Association Act of the State of California. Despite this concession, respondents contend that we should consider the effect of the law under which the alleged reorganization occurred, which limits membership in Bay Area to producers of horticultural or farm products. In view of the limitation thus imposed upon Bay Area's membership, respondents contend that we erred in concluding that membership is readily attainable. Further, since the stated purpose of the law is to encourage farmers "to attain a superior and more direct system of marketing" and "to make the distribution of agricultural products between producers and consumers as direct as can efficiently be done," respondents charge that it was error for us to conclude that eligibility for Bay Area's service is the sole purpose of membership in the association.

It should be noted that respondents at no time requested that the record be reopened to present evidence of Bay Area's alleged new status. The other parties to the proceeding therefore have had no opportunity of examining the effect, if any, of such reorganization.¹ Even now, respondents do not request that the record be reopened. Aside from the procedural problem, however, we find that Bay Area's contention is without merit.

Even if we assume that under California law membership in Bay Area is now limited to producers of horticultural or farm products, that fact

¹See North Atlantic Certificate Renewal Case, Order No. E-6560, footnote 12.

does not detract from our holding that membership is readily attainable. It merely indicates that membership is limited to a class. However, within the class membership is still readily attainable. As the Examiner points out in the Initial Decision (see p. 11a, Appendix), shippers of flowers alone would represent a substantial portion of the air shipping public sufficient to make Bay Area a common carrier by virtue of its holding out its service to members of this class. Similarly, the fact that the law under which Bay Area is alleged to have been reorganized states its purpose or policy to be the encouragement of superior and direct marketing does not affect the validity of our holding that eligibility for Bay Area's services is the sole purpose of membership. The rule that the determination whether a carrier is a common carrier depends, not upon what its charter says, but upon the manner of its operations, would obviously apply to a consideration of the statutory policy under which a carrier was organized. The record in the instant proceeding amply demonstrates that eligibility for Bay Area's consolidation and forwarding services is the sole inducement for membership.

Respondents contend further that our order which requires Bay Area to "cease and desist from engaging indirectly in air transportation in violation of section 401(a) of the Act" is not sufficiently definite and certain; that without clear and precise specification of the acts, operations and practices upon which we would hold that Bay Area is engaging indirectly in air transportation in violation

of section 401(a) of the Act, the order is erroneous.

We are satisfied that the cease and desist order, limited to Bay Area's engaging indirectly in air transportation in violation of section 401(a) of the Act, is sufficiently definite. Any possible doubt as to what constitutes indirect air transportation can be resolved by reference to the opinion upon which the order is based and which sets forth (in the Appendix) in detail Bay Area's operations which we found to constitute indirect air transportation of property (p. 5, Opinion). In this regard, the order resembles the Interstate Commerce Commission order upheld by the Court in *Brady Transfer & Storage Co. v. United States*, 80 F. Supp. 110, affirmed, 335 U. S. 875. In that case, the order required the respondent to cease and desist from "the motor carrier operations which it is found in said report now to be conducting * * *." Rejecting respondent's contention that the order was invalid for uncertainty, the court said (80 F. Supp. at p. 118):

"* * * the Commission has gone to considerable lengths in advising Brady and other carriers of what factors may be relevant to a determination by the carrier of its rights under an irregular route certificate. It cannot, as heretofore observed, lay down any hard and fast inelastic rule by which every case can be automatically determined. The order is sufficiently definite and certain that it is not invalid for want thereof."

In the instant proceeding it is inconceivable that, after a full hearing in which they participated vigorously and after the issuance of a detailed opinion, respondents should be unaware of the practices and conduct which constitute engaging indirectly in air transportation.

Attached to the petition for reconsideration is a petition for a stay of the cease and desist order pending reconsideration² or until the conclusion of the investigation in Docket No. 5947 or until the final disposition of the application for an exemption order filed or to be filed by respondents. In support thereof, respondents contend that the sudden termination of Bay Area's services, by which in excess of 50 per cent of the flower movement by air from the San Francisco Bay area region is handled, would have such adverse economic effect upon the entire flower industry in that area as to result in irreparable loss and injury to members and the industry as a whole; that this would work a grave injustice upon Bay Area's members if, upon the termination of the investigation in Docket No. 5947, it be determined that Bay Area's application for exemption should be granted in the public interest.³

We are not impressed with these arguments which assume that the cease and desist order re-

²By Order No. E-7198, adopted March 3, 1953, we stayed the cease and desist order pending consideration of the petition for reconsideration and for a stay, and in the event said petition is denied, until 30 days after the date of such denial.

³It is apparent that respondents have misconceived their remedy. Since it is clear from the record that Bay Area has been operating without

authority and the cease and desist order was prop- quires Bay Area to suddenly terminate its services. It should be noted that the cease and desist order does not compel Bay Area to refrain unqualifiedly from engaging in indirect air transportation, but only to refrain from doing so in violation of section 401(a) of the Act—that is, without securing the requisite authority from the Board in the form of a letter of registration as an air freight forwarder pursuant to Part 296 of the Board's Economic Reg- ulations. This has always been its obligation. Yet Bay Area has failed to apply for a letter of regis- tration as an air freight forwarder and still refuses to do so.

In this connection, it is pertinent to observe that Bay Area can qualify for a letter of registration as an air freight forwarder under Part 296 of the Board's Economic Regulations without an unduly burdensome or significant change in its operations. It can continue to limit its operations to handling flowers and providing special services required for them. While Bay Area would be required to pro- vide cargo and public liability insurance pursuant to Sec. 296.15, this obligation would not appear to impose an undue hardship upon the association. The record shows that Bay Area currently carries

erly issued, it would be inappropriate for us to stay that order until the investigation is completed. Respondents should have sought reconsideration of our order denying Bay Area's request for an ex- emption (Order No. E-7140). However, in view of all the circumstances, we believe we are warranted in looking at the substance of the relief sought, rather than the form in which the request is pre- sented.

motor carrier cargo liability insurance and purchases excess valuation for consolidated shipments from direct air carriers. The record also shows that for a period of about one year, Bay Area carried a policy of insurance against all risks of loss or damage to cargo carried by it.

Nor should the requirements of filing reports and filing a tariff prove unduly burdensome to Bay Area. True, the filing of a tariff would prevent Bay Area from engaging in its current practice of prorating the cost of consolidated shipments among the participating shippers. This, however, does not mean that the member shippers would thereby be deprived of the benefits which they now enjoy, for we are satisfied that Bay Area can file tariffs set at levels which over a representative period of time will give the shippers the advantages of the volume rates on the consolidated shipments of which their packages are a part.⁴

Even if Bay Area were to terminate its operations, it does not follow that such action would have the serious adverse effect upon members of Bay Area or the industry as a whole, which respondents allege. The fact that Bay Area handles a substantial flower movement by air from the Bay Area does not mean that the operations of shippers who do not use Bay Area are not profitable; other-

⁴For example, studies of flower shipments could be made from time to time to determine the lowest rate for the average daily consolidated flower shipments from the Bay region to all destinations. These rates could be designed to meet volume requirements on a seasonal basis.

wise Bay Area would have the business of all of the San Francisco flower shippers. Since a substantial proportion of flower shipments by air from the Bay region is not handled by Bay Area, it is difficult to see how termination of Bay Area's services would have an adverse economic effect upon the entire flower industry in that area. Nor would cessation of Bay Area's operations seriously affect its members. There is no claim that with Bay Area out of business its members would be without adequate air service. On the contrary, the record shows that for a ten-day period in 1950, during which Bay Area was completely inactive, Airborne handled all of Bay Area's shipments. In this connection it is pertinent to note that several members of Bay Area⁵ do not utilize Bay Area's services exclusively, and at least two of them⁶ ship regularly via Airborne and make only occasional or intermittent use of Bay Area's services. In view of the foregoing, respondent's contention is not persuasive.

We deem it significant that Bay Area is in direct competition with air freight forwarders who are common carriers and, as such, subject to regulation under the Act. We do not believe that Congress intended that non-profit associations competing directly with carriers subject to regulation should escape regulation merely because of their form of

⁵Including Western Wholesale Florist, The Zappettini Company, Nuckton Company, Golden Gate Wholesale, A. G. Enoch Company, Amling Floral Supply, and Boodell & Co.

⁶Amling Floral Supply and Boodell & Co.

organization. For while the instant proceeding involves but one non-profit corporation, we are not required to close our eyes to the inevitable consequence, should we exempt Bay Area from regulation, even for the period of time necessary to decide Docket No. 5947. It is readily apparent that the device employed by the members of Bay Area could be adopted by shippers wherever air freight forwarders are now operating, with the result that there might eventually be as many, if not more, associations than there are regulated air freight forwarders. And these associations would be entitled to exemption on the same basis as Bay Area. Under these circumstances, regulation of air freight forwarders would be but an idle gesture, for experience has shown that an agency cannot effectively protect the public interest where part of an industry is subject to regulation, while another large segment has been exempt from regulation.

Nor is it difficult to foresee the economic effect of unregulated competition upon the regulated forwarders. Already Bay Area's competition has had an adverse effect upon Airborne, a duly registered air freight forwarder which operates in the same area and which is subject to the Act and to the Board's regulations. Should the concept of associations of shippers spread, as it doubtless would were we to exempt Bay Area, the impact upon the air forwarding industry might well be disastrous. Indeed, it is quite possible that the competition of such associations would drive the regulated forwarders out of business, thus depriving the general

public of services which the shippers' associations do not offer or perform and denying to air transportation the development of air cargo to which forwarders would contribute.

This is not to say that we are committed to the policy of regulating associations of shippers in the same manner as we regulate other freight forwarders. This is a matter for future determination in the investigation proceeding (Docket No. 5947). Nor are we committed to the policy of protecting air freight forwarders who operate for a profit. Again, the future status of such freight forwarders likewise is a matter for determination in that proceeding. What we are doing here is recognizing the fact that many air freight forwarders have obtained letters of registration from the Board, and have entered business and made substantial capital investments in reliance upon our decision in the Air Freight Forwarder Case, 9 C.A.B. 473, wherein we promulgated the conditions under which they could operate until October 15, 1953. We believe it in the public interest in this instance to require all who enter the field of indirect air transportation, even though they be non-profit shippers' associations, to do so upon the same terms and conditions until we have re-examined the entire problem in the forthcoming investigation.

In view of the foregoing circumstances, the petition for a stay pending the investigation, or until final disposition of an application for exemption, should be denied.

Therefore, It Is Ordered, That the petition for reconsideration and the petition for stay of the cease and desist order (except to the extent already granted by Order No. E-7198) be and they hereby are denied.

Ryan, Chairman, Lee, Adams, and Gurney, Members of the Board, concurred in the above opinion and order.

[Seal] /s/ M. C. MULLIGAN,
Secretary.

United States of America, Civil Aeronautics Board,
Washington, D. C.

Docket No. 5947

In the Matter of

The Renewal of Part 296 of the Economic Regulations and an Investigation of Indirect Air Carriage of Property.

Adopted by the Civil Aeronautics Board at its office in Washington, D. C. on the 5th day of February, 1953

Order No. E-7141

ORDER OF INVESTIGATION

The Board promulgated Part 296 of the Economic Regulations after finding in the Air Freight Forwarder Case, 9 CAB 473 (1948) that the services of freight forwarders should be permitted on a tem-

porary basis and for a limited period during which experience could be developed upon which a permanent policy might be soundly determined. Part 296 of the Economic Regulations expires October 15, 1953; the trial period for forwarders, therefore, as envisaged by the Board in the Air Freight Forwarder Case, is drawing to a close.

The services now performed and to be performed by air carriers indirectly engaged in the air transportation of property present problems of unique and novel character in the field of air transportation. The imminent expiration of the aforesaid Part 296, and the holding by the Board in Docket 4902 that a shippers' association may be an indirect air carrier, requires a thorough investigation at this time into the problems of indirect air carriers of property as a means of analyzing the record of forwarder experience which has developed under Part 296, with a view to determining a sound permanent policy for the future of the indirect carrier (property) and for the forwarding industry. Particularly, further inquiry of a formal nature is now needed to determine the extent to which there may be a continuing need for air freight forwarders in view of the burgeoning of other indirect air carriers of property, e.g., so-called shippers' associations and shippers' cargo agents, and the extent to which there is a need for classification of all indirect air carriers of property, with suitable regulation to insure fullest development of each class. No question is raised at this time with respect to the activi-

ties of Railway Express Agency, Inc. (REA) which is authorized, under the exemption provision of section 1(2), to carry on its operations for an indefinite period, or until such time as the Board may determine that such operations are no longer in the public interest. Also, REA is currently engaged in negotiations with the direct air carriers with a view to the filing with us of satisfactory revised air express agreements which we directed in the Air Freight Forwarder Case. Accordingly, we are excluding REA from the scope of this investigation.

The Board, acting pursuant to sections 1(2), 205(a), 416(a) and 1002(b) of the Civil Aeronautics Act of 1938, as amended, and deeming its action necessary to carry out the provisions of said Act, and to exercise and perform its powers and duties thereunder:

It Is Ordered That:

1. An investigation be and it hereby is instituted by the Board into all matters relating to and concerning services of air carriers indirectly engaged in the air transportation of property. Such investigation shall include, inter alia, an inquiry into the following matters:

(a) The question of whether the public interest requires the renewal and/or amendment of Part 296 of the Economic Regulations;

(b) The extent to which there is a need for the classification of indirect air carriers, and the extent to which there is a need for sub-classifications

within such possible indirect air carrier classifications;

(c) The extent to which existing requirements of law should be modified in their application to such classifications;

(d) The extent to which there is or may be a general need for indirect air carrier services, including the following: air freight forwarders using direct carriers, air freight forwarders using indirect carriers, shippers' associations, air express forwarders (other than REA), and other similar indirect air carrier services;

(e) The types of operation best adapted to performance of the services required to meet such need;

(f) The extent to which other activities should be engaged in by such indirect air carriers to meet such need;

(g) The extent to which indirect air carrier operations should be subjected to restrictions to prevent discriminatory and destructive practices and the nature of any such restrictions;

2. The following be and they hereby are made parties to this proceeding:

(a) every holder of a letter of registration as an air freight forwarder (domestic);

(b) every applicant for a letter of registration as an air freight forwarder (domestic);

(c) in addition thereto, the following:

(1) Manufacturers and Wholesalers Association Shipping Conference, c/o Leslie Spelman, Koret of

California, 26 O'Farrell St., San Francisco, California;

(2) Carpel-Textile Association, Inc., c/o R. L. Corn, Room 530, 610 South Main, Los Angeles 14, California;

(3) Flower Consolidators of Southern California, 750 Maple Avenue, Los Angeles 14, California;

(4) Consolidated Flower Shipments, Inc., Bay Area, c/o John C. Barulich, San Francisco Municipal Airport, South San Francisco, California;

(5) Fashion Air Cooperative Association, 475-11th Avenue, New York, New York;

(6) John C. Barulich, c/o Consolidated Flower Shipments, Inc., Bay Area, San Francisco Municipal Airport, South San Francisco, California;

(7) Metropolitan Traffic and Receiving Unit, c/o Mr. O'Grady, Traffic Manager, Saks Fifth Avenue, New York, New York;

(8) Kansas City Shippers Association, c/o Mr. Higginbotham, Traffic Manager, Jones Store, Kansas City, Missouri;

(9) New England Carnation Growers Association, Inc., Logan International Airport, East Boston, Massachusetts;

(10) North Atlantic Lobster Institute, Portland, Maine;

(11) Boston Flower Exchange, Inc., Boston, Massachusetts.

3. This proceeding be and it hereby is set down for hearing before an examiner of the Board at a

time and place hereafter to be designated, at which all interested parties will be afforded an opportunity to present their views and any relevant data relating to the subject matter of this proceeding;

4. This order be published in the Federal Register.

By the Civil Aeronautics Board:

[Seal] /s/ FRED A. TOOMBS,
 Acting Secretary.

In the United States Court of Appeals
for the Ninth Circuit

No. 13727

CONSOLIDATED FLOWER SHIPMENTS,
INC.-BAY AREA,

Petitioner,

vs.

CIVIL AERONAUTICS BOARD and AIR-
BORNE FLOWER AND FREIGHT TRAF-
FIC, INC.,

Respondents.

CERTIFICATION OF TRANSCRIPT
OF RECORD

It Is Hereby Certified that, subject to the excep-
tions noted below, the attached materials numbered
from page 1 to page 2327, inclusive, constitute a

true copy of the record upon which were entered the Board's Orders Serial Numbers E-7139, dated February 2, 1953, and E-7269, dated April 1, 1953, together with briefs, transcripts of argument, and certain memoranda in the nature of briefs and arguments, which latter materials were considered by the Board insofar as based on evidence contained in the record, or on facts and circumstances entitled to official notice, in connection with the entry of the orders described.

Omitted from the certified transcript are Enforcement Attorney's Exhibits Nos. 325 and 326, copies of income tax returns of Mr. and Mrs. John C. Barulich, which, upon motion duly made, were withheld from public disclosure by the Board's Order Serial Number E-6306 of April 9, 1952, p. 1134 of the certified transcript. These materials are believed unnecessary to the Court's review of the issues presented by this case. To the extent that they may be deemed pertinent, however, the exhibits will be transmitted to the Court upon request, in such manner as to maintain their confidential status.

By the Civil Aeronautics Board:

[Seal] /s/ M. C. MULLIGAN,
Secretary.

[Endorsed]: No. 13727. United States Court of Appeals for the Ninth Circuit. Consolidated Flower Shipments, Inc., Bay Area, Petitioner, vs. Civil Aeronautics Board and Airborne Flower and Freight Traffic, Inc., Respondents. Transcript of Record. Petition to Review an Order of the Civil Aeronautics Board.

Filed May 18, 1953.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

[Title of Court of Appeals and Cause.]

PETITION OF CONSOLIDATED FLOWER SHIPMENTS, INC.-BAY AREA FOR REVIEW OF AN ORDER OF THE CIVIL AERONAUTICS BOARD

To the Honorable Justices of the United States Court of Appeals for the Ninth Circuit:

Consolidated Flower Shipments, Inc.-Bay Area presents this petition for review of, and to set aside an Order of the Civil Aeronautics Board, dated February 5th, 1953, Serial No. E-7139 and E-7269, dated April 1st, 1953, in Docket No. 4902.

I.

Background of Orders Under Review

Petitioner is a Nonprofit Cooperative Association duly incorporated and organized pursuant to the

provisions of §1190 et seq. of the Agricultural Code of the State of California, whose primary purposes, pursuant to such authority, is to arrange for the handling and transportation of products of its members in good standing by shipping their flowers and decorative greens to consignees or purchasers thereof at points and places in interstate commerce via the services of direct air carriers and surface carriers, which purposes and functions petitioner performs solely for the benefit of its members on a nonprofit basis, under the enabling provisions of §1190 et seq. of the Agricultural Code of the State of California.

Docket No. 4902 was instituted by the Board to determine whether petitioner has been or is now engaged indirectly in air transportation as a common carrier in violation of §401a of the Civil Aeronautics Act of 1938 as amended (hereinafter referred to as the Act), and Part 296 of the Board's Economic Regulations.

After due notice of hearing and initial decision of the Examiner, the Board issued its opinion and order, serial No. E-7139, dated February 5th, 1953, providing in part as follows:

"1. Consolidated Flower Shipments, Inc.-Bay Area, its successors and assigns, and John C. Barulich, its executive-secretary, and its officers, directors, agents and representatives cease and desist from engaging indirectly in air transportation in violation of section 401 (a) of the Act.

“3. This order shall become effective 12:01 a.m. on March 7, 1953.”

Concurrently with said opinion and order, the Board on the same day decided a related and then pending application of petitioner for an exemption order, assigned Docket No. 5037, and on February 5th, 1953, by order serial No. E-7140, denied said application for an exemption order without prejudice to the renewal thereof in a formal investigation intended to encompass the issues involved in Docket No. 4902 and 5037, and named petitioner herein as respondent in said investigation, assigned Docket No. 5247, at which all interested parties would be given an opportunity to present evidence relative to petitioner's application for an exemption order, if petitioner is held to be an indirect air carrier and subject to the jurisdiction of the Board.

On February 24th, 1953, petitioner filed with the Civil Aeronautics Board a Petition for Reconsideration, Rehearing or Reargument and Petition for Stay of the Effective Date of the Order under Review. On March 3rd, 1953, the Board issued its Order No. Serial E-7198, staying said Order under review until thirty (30) days after the determination of petitioner's petition for reconsideration and for stay of the order under review, until completion of the proceedings in Docket No. 5947.

On April 1st, 1953, the Board issued its order Serial No. E-7269, denying said petition for Reconsideration and denying said petition for a stay of the effective date of said Cease and Desist Order,

pending the conclusion on the proceedings in Docket No. 5947 or until the final disposition of an application for exemption order, to be filed therein. In accordance with the order of the Board said Cease and Desist Order will become effective May 1st, 1953, unless otherwise stayed.

II.

Issues for Review

The issues to be resolved under this petition for review are:

1. Did the Board commit legal error in assuming jurisdiction over the activities of petitioner?

2. Did the Board commit legal error in concluding that petitioner, its executive secretary and its officers, directors, agents and representatives have been, or are, engaging indirectly in air transportation, in violation of §401(a) of the Act?

3. Did the Board commit legal error in concluding that petitioner serves, or holds itself out to serve, the general public as a common carrier for compensation or hire?

4. Did the Board commit legal error in concluding that petitioner's service is available indiscriminately to any shipper who may wish to use it?

5. Did the Board commit legal error in concluding that petitioner undertakes to serve or serves the receivers or consignees of flower shipments of the members of petitioner?

6. Did the Board commit legal error in concluding that the payment, in some instances, of the transportation charges by the receiver or consignee, constitutes a holding out to the general public to provide transportation of property for compensation as an indirect air common carrier?

7. Did the Board commit legal error in concluding that petitioner is responsible to the general public for the transportation of shipments of flowers from point of receipt to point of destination?

8. Did the Board commit legal error in failing, neglecting or refusing to specifically define the alleged acts, practices and activities of petitioner, its executive secretary, and its officers, directors, agents and representatives which constitute alleged violations of §401(a) of the Act and the Board's Economic Regulations thereunder?

9. Did the Board commit legal error or abuse its discretionary power under §1005(d) of the Act in refusing to stay the effective date of said order Serial E-7139 until the conclusion of Appellate procedures or until the conclusion of the investigation in Docket No. 5947 and the final disposition of an application for exemption order to be filed therein?

III.

Comments on Issues for Review

Issue No. 1 concerns the basic nature of and the limitations upon, the jurisdiction conferred upon the Board by the Act.

Issues 2 to 7 inclusive concern the determination of the status of petitioner and the definition under the Act of:

1. Air carrier.
2. Common carrier freight forwarder.
3. Indirect air common carrier.

and whether, on consideration of the entire record, it can be validly concluded as a matter of law that petitioner is in any manner subject to the jurisdiction of the Board as an indirect air common carrier under the Act and Part 296 of the Board's Economic Regulations.

Issue 8 concerns the legal error committed by the Board in failing to definitively set forth the specific acts, conduct and practices of petitioner, alleged to be in violation of §401(a) of the Act.

Issue 9 concerns the granting of interlocutory relief pending the completion of Appellate procedures and the abuse of discretion on the part of the Board in failing to accord such relief required in the public interest.

The nine issues involved in this petition for review are of major importance, not only to petitioner as a bona fide nonprofit cooperative association of flower growers and producers, but to the entire flower industry in the San Francisco Bay area, affecting the economy and financial stability of the members of petitioner.

IV.

Basis for Jurisdiction

This petition is filed pursuant to the provisions of §1006(a) and (d) of the Civil Aeronautics Act. (52 Stat. 973; 49 U.S.C. 401.)

These provisions of the Act provide in part that any order issued by the Board shall be subject to review by the Circuit Court of Appeals for the Circuit where the petitioner resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia.

Petitioner is a California corporation, incorporated under the provisions of the Nonprofit Co-operative Association Act of the Agricultural Code of the State of California, above mentioned, and has its principal place of business as such in the County of San Mateo, State of California, at the San Francisco Municipal Airport.

V.

Relief Requested

Petitioner requests relief under this petition for review in the form of order or orders of this court:

1. Directing that the order of the Board under review be set aside as in excess of jurisdiction, or otherwise modified in such manner as may be necessary to correct the legal errors committed by the Board;

2. Directing the Board to comply with such interlocutory relief which may appear to be appro-

priate in response to any motions or intermediate proceeding put to this court by petitioner in the manner provided by law; and

3. Granting such other relief to petitioner as the law and the premises may justify.

Respectfully submitted,

CONSOLIDATED F L O W E R S H I P M E N T S,
INC.-BAY AREA.

By /s/ ANTONIO J. GAUDIO,
Attorney for Petitioner.

[Endorsed]: Filed April 8, 1953.

United States Court of Appeals
for the Ninth Circuit

No. 13,727

CONSOLIDATED FLOWER SHIPMENTS,
INC.-BAY AREA,

Petitioner,

vs.

CIVIL AERONAUTICS BOARD AND AIR-
BORNE FLOWER AND FREIGHT TRAF-
FIC, INC.,

Respondents.

June 30, 1953

Upon Motion for Leave to File Petition for Review
Before: Denman, Chief Judge, and
Stephens and Orr, Circuit Judges.

Denman, Chief Judge:

OPINION

Petitioner sought a review here of an order of the Civil Aeronautics Board which on June 12, 1953, we ordered dismissed because brought within 60 days after the entry of a denial of a motion to reconsider the order but not within the 60 days from the entry of the order required by 49 U.S.C. § 646 (a), providing:

“(a) Any order, affirmative or negative, issued by the Board under this chapter, except any order in respect of any foreign air carrier·

subject to the approval of the President as provided in section 601 of this title, shall be subject to review by the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within sixty days after the entry of such order, by any person disclosing a substantial interest in such order. After the expiration of said sixty days a petition may be filed only by leave of court upon a showing of reasonable grounds for failure to file the petition theretofore.”

Petitioner now moves our permission to file the same petition and offers the following as “reasonable grounds” for invoking our action.

The law of this circuit at the time petitioner was considering its appeal procedure, as established in three of its decisions, was that under the Civil Aeronautical law jurisdiction was obtained by this court by seeking its review within 60 days after the entry of the Board’s denial of a petition for rehearing on its order. *Western Air Lines v. C.A.B.*, 196 F. 2d 933 (Cir. 9), cert. den. 344 U.S. 875; *Southwest Air Lines v. C.A.B.*, 196 F. 2d 937 (Cir. 9); *Western Air Lines v. C.A.B.*, 194 F. 2d 21 (Cir. 9). As seen, it was not until June 12, 1953, over two months after petitioner had sought review relying on the law as so established, that we changed the law of the circuit by the above decision.

We think that petitioner’s reliance on the established law of the circuit at the time it first sought a review is a “reasonable ground” for the failure

to seek a review of the original order in the 60 day period from its entry.

At the hearing of the motion the parties stipulated that if it were granted the petition for review which we dismissed shall be deemed to have been this day filed and petitioner's further motion for a stay of the Board's order pending the consideration of the merits of the review shall be deemed submitted.

Upon the facts stated in the affidavits for the stay and those stated by the Board and Airborne Flower and Freight Traffic, Inc., we find that irreparable harm will be caused the petitioner unless the stay be granted.

The motion to file the petition for review is granted and the petition is deemed filed as of this date. The Board's order is ordered stayed until the decision on the merits of the petition for review.

[Endorsed] Opinion. Filed June 30, 1953. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

STIPULATION

It Is Stipulated that all exhibits received in evidence at the oral hearing before the Civil Aeronautics Board in the above-entitled matter, which exhibits constitute a part of the certified record filed herein by the Civil Aeronautics Board, be considered a part of the record on review in their original form as so filed without reproduction.

Dated: July 15, 1953.

/s/ JOHN H. WARNER,
Acting General Counsel, Civil Aeronautics Board,
Respondent.

/s/ RALPH SPRITZER,
Special Assistant to the Attorney General, Department of Justice.

/s/ ANTONIO J. GAUDIO,
Attorney for Consolidated Flower Shipments, Inc.-
Bay Area, Petitioner.

/s/ PAUL T. WOLF,
Attorney for Airborne Flower and Freight Traffic,
Inc., Respondent.

The foregoing stipulation is approved.

/s/ WM. E. ORR,

/s/ HOMER T. BONE,

U. S. Circuit Judges.

[Endorsed]: Filed July 21, 1953.

[Title of Court of Appeals and Cause.]

PETITIONER'S POINTS OF REVIEW

To the Clerk of the Above-Entitled Court and to Respondents:

Pursuant to Rule 19(b) of the Rules, petitioner will rely on the following points of review.

I.

The findings and conclusions of the Board that Bay Area has held itself out and continues to hold itself out to the public as a common carrier for compensation and is an air carrier as defined in §1(2) of the Act, and is engaged indirectly in the transportation of property by air, are erroneous.

II.

Bay Area and the service it performs is the creature and result of mutual and cooperative action on the part of the members thereof, and is not a holding out of service to the general public for compensation or hire.

III.

The order of the Board, dated February 5th, 1953, entered herein (E-7139) is void for uncertainty in that it is not definitive of the acts, conduct and practices allegedly investing common carrier status on petitioner.

IV.

Respondent Board abused its discretion under §105(d) of the Civil Aeronautics Act, in failing,

neglecting or refusing to stay its order under review during the pendency of an investigation in the renewal of part 296 of its Economic Regulations, assigned Docket 5947.

* * *

Dated: July 17, 1953.

/s/ ANTONIO J. GAUDIO.

[Endorsed]: Filed July 20, 1953.